

WSR 20-14-122
PROPOSED RULES
YAKIMA REGIONAL
CLEAN AIR AGENCY
[Filed June 30, 2020, 4:50 p.m.]

required to comply with the provisions of chapter 19.85 RCW.

June 30, 2020
Keith Hurley
Executive Director

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Yakima Regional Clean Air Agency Regulation 1 (YRCAA Regulation 1).

Hearing Location(s): On October 8, 2020, at 2:00 p.m.

Board meeting, via phone conference call or at Yakima City Hall if allowed in person. Depending on COVID-19 situation, if allowed in person, it will be at Yakima City Hall, if not it will be via phone conference call.

Date of Intended Adoption: October 8, 2020.

Submit Written Comments to: Hasan Tahat, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, email hasan@yrcaa.org, fax 509-834-2060, by September 8, 2020.

Assistance for Persons with Disabilities: Contact Hasan Tahat, phone 509-834-2050, fax 509-834-2060, email hasan@yrcaa.org, by September 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the changes is to update the regulation to be current with federal and state rules. Some sections were repealed in 2002. Make the regulation easier for readability and clean it up for errors and references. Eventually, the regulation to be submitted for inclusion in the state implementation plan (SIP).

Reasons Supporting Proposal: YRCAA Regulation 1 was last amended in 2002. Since that time there have been numerous changes to the supporting WAC which support the Washington State Clean Air Act, chapter 70.94 RCW.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: YRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Hasan Tahat, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, 509-834-2050; Implementation and Enforcement: Keith Hurley, 186 Iron Horse Court, Suite 101, Yakima, WA 98901, 509-834-2050.

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

A cost-benefit analysis is not required under RCW 34.05.328. YRCAA is an air pollution control authority and is not included in the list of affected agencies provided in RCW 34.05.328 (5)(a). YRCAA is not making the regulation voluntary.

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

Is exempt under RCW 70.94.141(1).

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

REGULATION 1 OF THE
YAKIMA REGIONAL CLEAN AIR ((AUTHORITY)) AGENCY
YAKIMA REGIONAL CLEAN AIR ((AUTHORITY)) AGENCY
YAKIMA, WASHINGTON ((98901))

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

## **AMENDATORY SECTIONS**

### **ARTICLE 1 - GENERAL ADMINISTRATIVE PROVISIONS**

#### **1.01 NAME OF ((AUTHORITY)) AGENCY.**

This agency is known as the Yakima Regional Clean Air ((Authority)) Agency, and in this regulation it is referred to as the ((("authority")) "agency" or "YRCAA"

#### **1.02 SHORT TITLE.**

This body of regulations is known as the "Regulation 1 of the Yakima Regional Clean Air ((Authority)) Agency" and ((from this section forward it will be)) is referred to as ((the "regulations")) "Regulation 1."

#### **1.03 POLICY.**

This section implements the Washington Clean Air Act (WCAA) by doing the following:

**A. PUBLIC POLICY.** Securing and maintaining levels of air quality that will:

1. Protect human health and safety;
2. Prevent injury to plant and animal life and property;
3. Foster comfort and convenience;
4. Promote economic and social development;
5. Facilitate the enjoyment of natural attractions;
6. Prevent or minimize the transfer of air pollution ((App. A)) to other resources;
7. Ensure equity and consistency with the Federal Clean Air Act (FCAA) ((App. B)) and WCAA ((App. B));
8. Educate and inform the citizens of Yakima ~~Co.~~ County on air quality matters;
9. Maintain accurate and current policies, regulations, and rules;
10. Perform administrative actions in a timely and effective manner; and
11. Cooperate with the local governments, the Yakama Nation, organizations or citizens on air quality matters.

**B. PROCEDURES AND STANDARDS.** Controlling air pollution through procedures, standards, permits, and programs.

**C. COMPLIANCE WITH ADOPTED STANDARDS.** Ensuring compliance with all air quality rules and standards, permits, and programs.

**D. COOPERATION AND COORDINATION.** Cooperating and coordinating with federal, state, county, local, and tribal governments; governmental agencies; organizations; businesses; and the public in all matters related to air pollution characterization, measurement; and control.

**E. STRATEGIC PLANNING.** Developing strategies to avoid, reduce, or prevent air pollution through:

1. Innovative solutions;
2. Early planning; and
3. The integration of air pollution control in the work of other agencies and businesses.

**F. GUIDELINES.** Preparing guidelines which interpret, implement, and enforce these regulations.

**G. BUSINESS ASSISTANCE POLICY.** Providing reasonable business and technical assistance to the community.

**H. STATE ENVIRONMENTAL POLICY ACT (SEPA).** Fully complying with all the requirements of the SEPA ((App. B)) and holding other agencies, businesses, and individuals

accountable for decisions within the jurisdiction of the authority agency.

**I. STATE IMPLEMENTATION PLAN (SIP).** Fully complying with the SIP ((App. B). Changes in the SIP will be implemented through general rules or regulatory orders.)

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

#### **1.04 ((GENERAL)) APPLICABILITY.**

((All activities, persons, and businesses under the jurisdiction of this authority are subject to all provisions of these regulations except as described in a variance issued under subsection 3.00D (pg. 3-1), a specific exemption granted under subsection 3.03H (pg. 3-12), or granted exemptions from specific subsections. Implementation of these regulations may be through permits or orders that provide for equal or greater effectiveness in minimizing the effects of an existing or potential source of air pollution.))

**A.** The agency implements and enforces the Washington Administrative Code (WAC) adopted by Ecology under the authority in chapter 70A.94 RCW, as in effect now and including all future amendments, except where specific provisions of Regulation 1 apply;

**B.** The provisions of this regulation shall apply within Yakima County of Washington State, excluding all lands located within the external boundaries of the Yakama Indian Nation;

**C.** The agency is authorized to enforce this regulation and may also adopt standards or requirements;

**D.** The agency does not have jurisdiction over the following sources:

1. Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction;
2. Automobiles, trucks, aircraft; and
3. Those sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) through chapter 80.50 RCW.

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

#### **1.05 ROLES AND RESPONSIBILITIES.**

**A. THE ((AUTHORITY)) AGENCY.** The ((authority)) agency is a municipal corporation with the vested powers and duties ((rights)) in RCW 70A.94.081 ((WCAA (App. B) and exercising)) within its jurisdiction ((within)) in Yakima County, ((WA.))

**B. THE BOARD OF DIRECTORS.** The governing body of the ((authority)) agency is the board of directors. The board has the power to:

1. Adopt, amend and repeal its own rules and regulations in accordance with chapter ((RCW)) 42.30 RCW, Open Public Meetings Act and chapter ((RCW)) 34.05 RCW, Administrative Procedure Act;
2. Hold hearings relating to any aspect related to the administration of the WCAA and other applicable law;
3. Issue any orders necessary to carry out the functions of the WCAA and enforce them by all appropriate administrative and judicial proceedings;

4. Require access to records, books, files and other information specific to the control, recovery or release of air pollutants into the atmosphere;

5. Obtain necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

6. Prepare and develop comprehensive plans for the prevention, abatement and control of air pollution;

7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of the state and federal laws and regulations;

8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;

9. Collect and disseminate information and conduct educational and training programs relating to air pollution;

10. Consult, cooperate, or contract with other agencies, departments, educational institutions, governments, and interested persons or groups.

11. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out the functions of WCAA and other applicable laws.

12. Appoint an Air Pollution Control Officer (APCO) whose sole responsibility shall be to observe and enforce the provisions of chapter 70A.94 RCW and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution.

13. The board may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of chapter 70A.94 RCW.

14. Approve legal action.

**C. DUTIES OF THE AIR POLLUTION CONTROL OFFICER.** The ~~((air pollution control officer))~~ ~~((APCO))~~ is appointed by the board and serves as the Executive Director of the agency. The APCO observes and enforces state and federal laws, orders, ordinances, and regulations of the ~~((authority))~~ agency pertaining to the control and prevention of air pollution. The APCO shall implement Regulation 1 consistent with:

1. Applicable federal and state laws and regulations;

2. County and/or city municipal ordinances where they are at least as stringent as those of the agency; and

3. Policies and directives of the board unless specifically limited elsewhere in this regulation or by other laws or regulations.

**D. SIGNING AUTHORITY.** The APCO shall take the following actions for the agency:

1. Sign official complaints, issue notices of violations, impose penalties, issue permits, sign regulatory or approval orders, sign contracts, and administrative correspondence.

2. Approve SEPA documents as the Responsible Official.

3. Apply to any court for necessary orders.

**E. ADVISORY COUNCIL.** The board may appoint an advisory council to advise and consult with the board and the APCO in implementing these regulations. The board may

submit to the advisory council recommendations for the adoption or modification of regulations or emission standards or other matters that it considers appropriate.

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

#### 1.06 RECORDS.

**A. PURPOSE.** To define the policy for protecting records and making them available to the public.

**B. APPLICATION.** To provide access to any information available under federal or state law concerning the business of the ~~((authority))~~ agency. The provisions of this section shall be interpreted to assure continuing public confidence in the ~~((authority))~~ agency.

#### C. PUBLIC RECORDS.

1. **Availability.** All public records of the ~~((authority))~~ agency are available for public inspection and copying during normal working hours at the office of the ~~((authority))~~ agency.

2. **Legal Exemptions.** Availability of public records is subject to exemptions and requirements of chapters 42.56 and 70A.94 RCW ~~((RCW 42.17.31056 and RCW 70.94.))~~

3. **Process.** All requests for records shall be processed according to chapter 42.56 RCW ~~((RCW 42.17.56))~~ and the current YRCAA Administrative Code part C ~~((fee schedule.))~~

#### D. CONFIDENTIAL RECORDS.

1. **Availability.** Whenever the ~~((authority))~~ agency obtains any information, other than ambient air quality data or emission data, which:

a. The owners or operators certify in writing that the information relates to unique processes or production or the release of the information will likely have an adverse effect on the competitive position of the source; and

b. Subject to review and approval by the ~~((authority))~~ agency; then

c. The information is only for the confidential use of the ~~authority~~ agency.

2. **Summaries for Publication.** The ~~((authority))~~ agency may use confidential information to compile or publish analyses or summaries of the outdoor atmosphere; if:

a. The analyses or summaries do not reveal any information otherwise confidential under the provisions of this subsection; and

b. The emission data given to the ~~((authority))~~ agency is correlated with applicable emission limitations and other control measures and shall be available for public inspection at the office of the ~~((authority))~~ agency.

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#### 1.07 GENERAL PROVISIONS.

**A. COMPLIANCE.** Failure to comply with any of the following is a violation of this regulation, and may result in either civil or criminal penalties;

1. Federal Clean Air Act (FCAA) ~~((App. B.))~~

2. Washington State Clean Air Act (WCAA) ~~((App. B.))~~,

3. Code of Federal Regulations (CFR) (~~issued by EPA,~~)

4. Washington Administrative Code (WAC) issued by Ecology,

5. Any section, subsection, or appendix of this regulation,

6. Any permit requirement, or

7. Any order or approval issued by the ~~((authority))~~ agency.

**B. FALSE OR MISLEADING INFORMATION.** ~~((No person shall:~~

1. **False Statements.** ~~(WAC 173-400-105(7) Make any false materials statement, representation or certification in any form, notice or report required under this regulation, resolution, permit or order of the authority or by WCAA (App. A);) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70A.94 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.~~

2. **Monitoring Devices.** ~~((WAC 173-400-105 (8)) Render inaccurate any monitoring device or method required under this regulation, resolution, permit or order of the authority or by WCAA (App. A-)) No person shall render inaccurate any monitoring device or method required under chapter 70A.94 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.~~

**C. ALTERED DOCUMENTS.** No person shall reproduce or alter any order, registration certificate, or other paper issued by the ~~((authority))~~ agency which evades or violates or aids the evasion or violation of any provision of this regulation or any other law.

**D. AVAILABILITY OF ORDERS.** Any order or registration certificate required to be obtained by this regulation, shall be available on the premises designated on the order or certificate.

**E. POSTING OF NOTICES.** No person shall mutilate, obstruct or remove any notice posted by the ~~((authority))~~ agency unless authorized by the board or the APCO.

**F. SEVERABILITY.** If a section of this regulation is declared unconstitutional or the application of a section is held invalid, the remainder of the regulation shall not be affected.

**G. WAIVER.** Nothing in this regulation is intended to impair any cause of action or legal remedy by a person or the public, for the injury or damage from the emission of any air contaminant.

**H. REVISIONS.** The board may elect to open the entire regulation, an article, individual sections, specific subsections, or appendices for future revision at any time without opening the remainder of the regulation.

**I. DISCLAIMER.** Nothing in this regulation relieves a person ~~((App. A))~~ from the obligation to comply with laws, regulations, and standards of state or federal agencies.

**J. DEFINITIONS, ACRONYMS, AND ABBREVIATIONS.**

1. **Commonly Used Definitions.** ~~((The d))Definitions of terms ((and phrases)) used in ((more than one section of the)) this regulation are located in appendix A<sub>2</sub>~~((, and they are identified in the text with (App. A) following the term. When a definition is copied or abstracted from another source, the source is identified.))~~~~

2. **Commonly Used Acronyms and Abbreviations.**

Commonly used acronyms and abbreviations are defined in appendix B<sub>2</sub> ~~((, and they are identified in the text with (App. B).))~~

3. ~~((Specific Definitions. The definitions of terms and phrases used in only one section of the regulation are located in the beginning of the section, and they are identified in text with a (\*) following the term.))~~

4. ~~((Part of the Regulation. The definitions of terms, phrases, acronyms, and abbreviations are an integral part of this regulation.))~~

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

**1.08 EFFECTIVE DATE.** These regulations are effective as of the date of adoption.

**REPEAL SECTIONS 1.09 REVOCATIONS.**

**AMENDATORY SECTIONS**

**ARTICLE 2 - GENERAL REGULATIONS**

**2.01 AUTHORITY AND INVESTIGATION ((AIR POLLUTION CONTROL OFFICER - POWERS AND DUTIES.))**

~~((A. POWERS AND DUTIES. The board shall appoint an air pollution control officer (APCO) competent in the field of air pollution control whose responsibility shall be to implement these regulations in a manner consistent with:~~

1. Applicable federal and state laws and regulations;

2. County and/or city municipal ordinances where they are at least as stringent and effective as those of the authority ~~agency; and~~

3. Policies and directives of the board unless specifically limited elsewhere in this regulation or by other laws or regulations.))

**A. DELEGATED AUTHORITY.** ~~((When))~~ In this regulation, the term "APCO" ~~((is used in this regulation, it also))~~ applies to any authorized representative of the ~~((authority))~~ agency conducting official business on behalf of ~~((for))~~ the APCO. ~~((App. B) and the authority.))~~

**B. INVESTIGATIONS.** The APCO may make ~~((reasonable))~~ investigations or inspections.

1. **Purpose of Investigations.** To investigate or inspect conditions for the control, recovery or release of air pollutants into the atmosphere.

2. **Scope of Investigations.** These investigations or inspections shall be limited to investigating and/or enforcing the following:

a. *Bona fide* complaints about an alleged violation of this regulation, an amendment, or revision;

b. An alleged or actual violation of this regulation, an amendment, or revision;

c. An alleged or actual violation of a federal or state law or regulation enforced by the ~~((authority))~~ agency;

d. Any permit, order, or condition of approval issued by the ~~((authority))~~ agency;

e. Periodic testing and inspection of any source ~~((App. A))~~; or

f. Any other records, files, or other information obtained under B 1 above. ~~((that relate to subsection 2.01C1 (pg. 2-1))~~

**C. RIGHT TO OBTAIN SAMPLES.**

1. **Notification of Owner or Lessee.** If, during the course of an inspection, the APCO desires to obtain a sample of air contaminant, fuel, process material or other material which affects or may affect the emission of air contaminants, the APCO shall notify the owner or lessee of the time and place of obtaining a sample.

**2. Owner/Operator Sampling.**

a. The owner or operator may take a sample at the same time, place, and method as the sample taken by the APCO.

b. As an alternative the owner or operator may request a representative portion of the sample taken by the APCO.

c. The representative sample shall not be provided to the owner or operator if the actions needed to obtain the representative sample can compromise the ability of the APCO to obtain an accurate sample.

3. **Receipt for Sample.** If requested the APCO shall give a receipt to the owner or operator for the sample obtained.

**D. MAINTAIN RECORDS.** The APCO shall maintain appropriate records and prepare periodic reports to the board.

~~(E. SIGNING AUTHORITY. The APCO is authorized by the board to take the following actions for the authority:~~

~~1. To sign official complaints, issue notices of violations, impose penalties, issue permits, sign regulatory or approval orders, sign contracts, and administrative correspondence.~~

~~2. To approve SEPA (App. B) documents as the Responsible Official.~~

~~3. To apply to any court for necessary orders.)~~

**E. LEGAL ACTION.** When directed by the board (~~approves~~), the APCO may commence legal action. Nothing in this regulation may be construed to limit the APCO from using any other legal means to enforce the provisions of these regulations.

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

**2.02 AUTHORITY TO COLLECT FEES.**

**A. LEGAL AUTHORITY.** ~~The WCAA ((App. B))~~ authorizes the ((authority)) agency to assess fees and recover costs for permits, registrations, and professional services.

**B. ((CHARGES)) FEES.** All fees will comply with the board approved fee schedule. ((Charges)) Fees may include but are not limited to the following:

1. Reimbursement of ((authority)) agency staff time for review of complex projects or lengthy enforcement actions;

2. Costs incurred by the ((authority)) agency for the implementation of the air operating permit program ((as defined)) in WAC 173-401-905 and WAC 173-401-940(1).

3. Reimbursement of ((authority)) agency staff time for costs to prepare notices of construction and initial Synthetic Minor (SM) ((App. A & B)) regulatory orders;

4. Reimbursement ((to a minimum of 50%)) of ((the)) all costs incurred for administration of the annual registrations program, including periodic inspections;

5. Charges from Ecology ((App. B)) for state level support and oversight work; and

6. ((Appropriate)) Charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.

**C. REFUNDS.**

1. The following fees are non-refundable:

a. Actual costs incurred by the ((authority)) agency.

b. Application fees.

2. Fees collected in excess of actual costs will be refunded without interest.

3. Fees collected in error will be refunded with interest.

**D. FEES.**

1. **Adoption of Fee Schedules.** Fee schedules shall be adopted by board resolution ~~under~~ pursuant to the requirements ((authority)) of ((RCW)) chapter 42.30 RCW (Open Public Meetings Act) ~~((at any time after receiving public comment))~~.

2. **Availability of Fee Schedules and Related Information.** The fee schedule and billing rate schedule for reimbursable fees shall be made available upon request or may be obtained from the agency website.

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

**2.03 APPLICABLE STATE AND FEDERAL REGULATIONS.**

The ((authority)) agency implements and enforces the following air pollution rules. ((WAC (App. B) and CFR (App. B))) Definitions contained within the following listed rules in effect now and including all future amendments apply, except for specific definitions in Appendix A of YRCAA Regulation 1.

**A. STATE REGULATIONS.**

Chapter 173-400 WAC	General Regulations for Air Pollution Sources
Chapter 173-401 WAC	Operating Permit Regulation
Chapter 173-420 WAC	Conformity of Transportation Activities to Air Quality Implementation Plans
Chapter 173-425 WAC	Open Burning
Chapter 173-430 WAC	Agricultural Burning
Chapter 173-433 WAC	Solid Fuel Burning Device Standards
Chapter 173-434 WAC	Solid Waste Incinerator Facilities
Chapter 173-435 WAC	Emergency Episode Plans
Chapter 173-450 WAC	Establishing Requirements for the Receipt of Financial Aid
Chapter 173-460 WAC	Controls for New Sources of Toxic Air Pollutants
Chapter 173-470 WAC	<del>Ambient Air Quality Standards For Particulate Matter;</del>
Chapter 173-474 WAC	<del>Ambient Air Quality Standards for Sulphur Oxides;</del>
Chapter 173-475 WAC	<del>Ambient Air Quality Standards for Carbon Monoxide, Ozone, and Nitrogen Dioxide;</del>
Chapter 173-476 WAC	<u>Ambient Air Quality Standards</u>
Chapter 173-481 WAC	Ambient Air Quality and Environmental Standards for Fluorides
Chapter 173-491 WAC	Emission Standards and Controls for Sources Emitting Gasoline Vapors
Chapter 173-806 WAC	Model Ordinance
Chapter 197-11 WAC	SEPA ((App. B)) Rules.

**B. FEDERAL REGULATIONS.**

For purposes of this regulation, the agency adopts by reference the following federal rules in effect on September 1, 2020:

40 CFR Part 51	Requirements for Preparation, Adoption, and Submittal of Implementation Plans
40 CFR Part 52	Approval and Promulgation of Implementation Plans;
Subpart A	General Provisions; and
Subpart WW	Washington
40 CFR Part 58	Ambient Air Quality Surveillance
40 CFR Part 60	Standards of Performance for New Stationary Sources
40 CFR Part 61	National Emissions Standards for Hazardous Air Pollutants (NESHAPS)
40 CFR Part 63	National Emission Standards for Hazardous Air Pollutants for Source Categories
40 CFR Part 64	Compliance Assurance Monitoring;
40 CFR Part 68	Chemical Accident Prevention Provisions
40 CFR Part 70	State Operating Permit Programs
40 CFR Part 82	Protection of Stratospheric Ozone
40 CFR Part 503,	Standards for the Use or Disposal of Sewage Sludge
Subpart A,	General Provisions
Subpart E,	Incineration
40 FR Part 763	Asbestos Model Accreditation Plan.

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

**2.04 PUBLIC PARTICIPATION IN PERMITTING. ((WAC 173-400-171) — Repealed by Amendment 1))**

**A. Public notices and opportunity for public comments concerning all general air pollution permits shall comply with WAC 173-400-171.**

**B. Public notices and opportunity for public comments concerning all Title V Permits (Air Operating Permits) shall comply with Chapter 173-401 WAC, Part IX.**

**2.05 APPEALS**

**A. PURPOSE.** This section ((To)) define((s the)) local policy for appeals of decisions by the APCO ((App. B)) or board.

**B. APPLICABILITY.** This provision applies to an appeal of ((A)) any final written decision, order, penalty, fee, permit action, or resolution made by the APCO or board. ((may be appealed.))

**C. PROCESS.**

**1. General Direction.** The specific details for appeals are in ~~((chap. 34.04 RCW, chap.))~~ RCW 34.05.060, chapter

~~((chap.))~~ 43.21 BRCW, chapter ((chap-)) 70A.94 RCW, WAC 173-400-250 and WAC 173-401-735.

~~((2. Agricultural Odors. See subsection 3.01C3a4) for an appeal involving agricultural odors.))~~

**2. ((3. Mutual Settlement.)) Voluntary Compliance** ~~((Nothing shall prevent the APCO or board from making efforts to obtain voluntary.))~~ Nothing in this regulation shall prevent the APCO or board from obtaining voluntary compliance through warning, mutual settlement or any other appropriate means.

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

**AMENDATORY SECTIONS**

**ARTICLE 3 - RULES**

**3.01 GENERAL RULES.**

**A. PURPOSE.** To establish ((define)) rules ((of a general nature-)) for sources of air pollution, outdoor and agricultural burning, use of wood heaters, burn bans, stratospheric ozone-depleting chemicals, asbestos and specific fugitive dust sources.

**B. APPLICABILITY.** ~~((Applies to the rules in articles 3 and 4))~~ This provision applies to all activities, persons and businesses under the jurisdiction of the agency as provided under RCW 70A.94.141.

**C. EXEMPTIONS.** None.

**D. VARIANCES PROCESS.** ~~((RCW 70.94.181))~~

~~((1. Purpose. To provide a process for obtaining relief from these regulations.))~~

~~((2. Applicability. Any person (App. A) who is subject to these regulations.))~~

**1. Requests for Variances ((or Renewals)).**

a. General Process.

1) Petitioner submits the written application or request and documentation to the APCO ~~((App. B))~~;

2) APCO reviews the application and submits it to the board with a recommendation;

3) Board makes a decision or recommendation to Ecology.

a) If the requested variance is to an ~~((authority))~~ agency rule which is not duplicated in the SIP ~~((App. B))~~ or the WAC ~~((App. B))~~, the decision is made by the board.

b) If the requested variance is to a state rule, the application is referred to Ecology ~~((App. B))~~ with a recommendation, and Ecology approves the request. If approved, Ecology will send the request to EPA ~~((App. B))~~ with a recommendation for final approval and inclusion in the SIP ~~((App. B))~~; and

4) The variance is granted by the ~~((authority))~~ agency after the final approval.

b. Application. The following information is required in the application or request:

1) Specific regulation from which relief is requested;

2) Detailed explanation that justifies relief from compliance with the regulation;

3) Plans to bring the source into compliance with the regulation prior to the expiration of the variance;

4) Air pollution source, equipment, and control apparatus ~~((App. A))~~ subject to the variance;

5) Any equipment connected to, serving, or served by the air pollution source, equipment, and control apparatus subject to the variance;

6) Plot plan showing the distance and height of buildings within 200 feet or other distance specified by the APCO from the location of the contaminants of the air pollution source; and

7) Estimated amount that the emissions will exceed standards as a result of the variance.

c. Additional Documentation.

1) Any additional information required by the APCO.

2) Any information volunteered by the petitioner.

d. Review Criteria. Before granting a variance, the board must consider the interests of:

1) The applicant;

2) Owners of adjacent property likely to be affected by the variance; and

3) The general public.

e. Review Period. Any application for variance or renewal must be approved or disapproved by the board within 60 days of receipt unless the applicant and the board agree to a continuance.

f. Public Notice and Public Comment (~~(Involvement)~~). Public notice and the public comment period shall comply (be done as required in section 2.04) with WAC 173-400-171.

**1. Conditions for Granting a Variance.**

a. The emissions proposed do not endanger public health, safety, or the environment;

b. The emissions from the source proposing the variance either singularly or in combination with other sources in the vicinity will not cause a violation of a NAAQS (~~(App-B)~~) or a PSD (~~(App-B)~~) increment; and

c. Compliance with the rules or regulations without a variance would produce serious hardship without equal or greater public benefits.

**3. Limitations for Granting a Variance (~~or Renewal~~).**

a. No Practicable Technology Available.

1) Adequate prevention, abatement or control of the pollution is not available;

2) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of Ecology or board may prescribe. (The variance is granted only until the necessary technology for prevention, abatement or control becomes available.)

3) The total time period for a variance and renewal of such variance shall not exceed one year.

4) When the control technology becomes reasonably available;

a) The variance may be rescinded; and

b) Ecology or the board may prescribe alternate measures.

b. Compliance with Requirements will be Difficult.

1) Will require taking measures which are extensive or costly;

2) Must be accomplished over a long time period;

3) The variance must be granted for a reasonable time to complete the required measures;

4) The variance must contain a schedule for completing the measures in a timely manner; and

5) Must include conditions requiring adherence to the schedule.

**4. Expiration.** Variances and renewals shall expire one year or less after the issuance, or sooner if;

a. The conditions of the variance or renewal are fulfilled; or

b. Replaced by a new law or regulation.

**5. Renewals.** (~~(RCW 70.94.181(1))~~) Any variance may be renewed for the same terms, conditions, and period as when the variance was granted up to one year from the initial issuance of the variance.

a. Application for Renewal. Must be submitted at least 60 days prior to the expiration of the variance. Immediately upon the receipt of the application the board must give public notice of the application.

b. The process for the renewal will follow subsection 3.001D3 (~~(pg-31)~~).

**Renewals After Complaints Concerning Variances.** (~~(RCW 70.94.181(1))~~) If Ecology or the board receives a complaint about the variance, a renewal must not be granted until the board issues a public notice and holds a public hearing on the complaint. Based upon results of the public hearing, the board will grant a renewal if it finds the renewal is justified.

~~(d.)~~ c. Applications for renewals beyond one year must apply for a new variance.

**6. Judicial Review.** A variance or its renewal is not the right of the applicant or holder, but is granted at the discretion of the board. Any applicant who is adversely affected by the denial or the conditions of a variance or its renewal may obtain judicial review under the provisions of chapter 34.05 RCW.

**7. Emergency Provisions.** Nothing in this section or any variance or renewal granted under this section is construed to limit the applications of the emergency provisions and procedures of air pollution episodes as described in the WCAA (~~(App-B)~~).

**E. OPERATION AND MAINTENANCE MANUAL OR PLAN.**

**1. Purpose.** To define operation and maintenance standards for all process and control apparatus (~~(App-A)~~) to prevent avoidable emissions.

**2. Applicability.** Any person or emission unit which is subject to these regulations.

**3. Exemption.** Process or control apparatus which is out of service.

**4. Requirement.** The owner or operator of an air pollution source shall:

a. Operate and maintain all process and control apparatus, which has the potential to allow emissions, according to the specifications and recommendations of the manufacturer;

b. Maintain this equipment in good repair and working condition;

c. Operate this equipment to minimize emissions; and

d. Keep a current copy of the manufacturer's manuals and specifications on the site or the nearest office and available for inspection by the APCO (~~((App. B))~~).

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

~~((3.01 EMISSION STANDARDS. -- Repealed by Amendment 1.))~~

**3.02 STANDARDS FOR SOURCES OF HAZARDOUS AIR POLLUTANTS.** (~~WAC 173-400-075 & chap. 173-460 WAC~~)

**A. PURPOSE.** To control and prevent emissions of hazardous air pollutants.

**B. APPLICABILITY.** Applies to the owners or operators of any stationary source subject to the requirements of 40 CFR Parts 61 and 63.

**C. REFERENCES.**

1. (~~Subsection 2.03B references~~) 40 CFR Parts 61 and 63 and Chapter (~~WAC~~) 173-400-~~(075)~~ WAC as applicable.

~~((2. Hazardous air pollutants (HAP) are listed in app. L.))~~  
~~((3. Toxic air pollutants (TAP) are listed in app. K, para. B.))~~

**D. EMISSION STANDARDS FOR PERCHLOROETHYLENE (PCE) DRY CLEANERS.**

~~((WAC 173-400-075(6)))~~

**1. Purpose.** To define (~~specific~~) standards for dry cleaners using the solvent Perchloroethylene (PCE), in accordance with (~~((App. B) which supplement~~) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

**2. Applicability.** Any dry cleaning operations using (~~that uses~~) PCE.

**3. Requirements.** The quantity of PCE used annually determines the source category and the venting and leak inspection frequency requirements.

a. Source Categories: (~~(A)~~) are shown in table(~~(s)~~) 3.02-1.

**Table 3.02-1 PCE Dry Cleaner Source Categories**

Applicability	Small Area Sources (a)	Large Area Sources (b)	Major Area Sources (c)
Dry cleaning Facilities with <del>((4))</del> Only Dry-to-Dry Machines	Purchasing less than 140 gallons PCE/yr	Purchasing between: 140-2,100 gallons PCE/yr	Purchasing more than 2,100 gallons PCE/yr
<del>(((2) Only Transfer Machines))</del>	<del>((200 gallons PCE/yr))</del>	<del>((200-1,800 gallons PCE/yr))</del>	<del>((1,800 gallons PCE/yr))</del>
<del>(((3) Both Dry-to-Dry &amp; Transfer Machines))</del>	<del>((140 gallons PCE/yr))</del>	<del>((140-1,800 gallons PCE/yr))</del>	<del>((1,800 gallons PCE/yr))</del>

b. Change in PCE Consumption. If there is an increase or decrease in the amount of PCE used that changes the source category, the owner or operator of the source must notify the (~~authority~~) agency within 180 days.

c. Venting and Leak Inspection. The requirements are shown in table 3.02-2. During the inspection the systems must be operating. An inspection must include an examination of the following system components:

1) Hose and pipe connections, fittings, couplings, and valves;

- 2) Door gaskets and seatings;
- 3) Filter gaskets and seatings;
- 4) Pumps;
- 5) Solvent tanks and containers;
- 6) Water separators; Muck cookers;
- 7) Stills;
- 8) Exhaust dampers;
- 9) Diverter valves; and
- 10) Cartridge filters housings.

**Table 3.02-2 PCE Dry Cleaner Venting and Leak Inspection Requirements.**

Requirement	Small Area Sources (a)	Large Area Sources (b)	Major Area Sources (c)
Air-PCE Vapor Venting System (1) Installed on or before Sept. 21, 1993.	No requirement	Through a refrigerated condenser.	Through a refrigerated condenser.
(2) Installed after Sept. 21, 1993.	Thru a refrigerated condenser.	Through a refrigerated condenser.	Through a refrigerated condenser followed by a small carbon adsorber.
(3) PCE Leak Inspection Frequency	Every other week	Weekly	Weekly

d. Registration is required as specified in section 4.01 (~~(pg. 4-1))~~).

**e. Operation and Maintenance Manual or Plan.**

1) As required by subsection 3.01E (~~(3.010E (pg. 3-3))~~); and

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

**f. Leak Repair.**

1) Leaks must be repaired within 24 hours of detection unless repair parts cannot be ordered;



2) Repair parts must be ordered within two working days of detecting the leak; and

3) Repair parts must be installed within 5 working days after receiving them.

g. Storage of PCE.

1) Store all PCE and wastes containing PCE in a closed container; and

2) Drain cartridge filters in the housing or other sealed container for at least 24 hours before discarding the cartridges.

h. Recordkeeping Requirements. The following requirements are in addition to the requirements in section 3.11. The following listed documents and records must be kept on-site at the dry cleaning facility for at least:

1) as long as the PCE dry cleaning and process vent or control systems are in operation:

a) Design specifications and operating manuals;

b) Maintenance plans;

c) Design specifications and operating manuals for any modifications to these systems.

2) Five years after the close of the business year.

a) A record of dates and results of all monitoring, inspections, and repairs of the PCE dry cleaning system.

b) A record of the amount of PCE purchased each month including the receipts for the PCE purchases.

c) A record of the amount of PCE used for each machine during the previous 12 months.

d) A record of the total weight of articles cleaned for each machine during the same 12 month period used in subsection 3.02D3h (2)(c) ~~((pg. 3-6))~~.

e) If a refrigerated condenser is used on a dry-to-dry machine, dryer, or reclaimer, a weekly record of the air temperatures measured at the outlet of the refrigerated condenser during the cool-down period to verify compliance with subsection 3.02D3i (pg. 3-6).

f) If a refrigerated condenser is used on a washer, a weekly record of the differences between the air temperatures measured at the inlet and outlet of the refrigerated condenser to verify compliance with subsection 3.02D3i ~~((pg. 3-6))~~.

g) If a carbon adsorber is used on a dry cleaning system, a weekly record of measuring the concentration of outlet PCE to verify compliance with subsection 3.02D3j ~~((pg. 3-7))~~.

i. Requirements for Refrigerated Condensers.

1) Have temperature sensors permanently installed prior to September 23, 1996, if the PCE dry cleaning system was built prior to December 9, 1991;

2) Have permanently installed temperature sensors that have a working range between 32°F and 120 °F ~~((App. B))~~ (0°C and 49°C ~~((App. B))~~), can be seen at all times, and be accurate to within 2°F or 1.1°C.

3) Have an air temperature at the outlet of the refrigerated condenser installed on a dry-to-dry machine, dryer or reclaimer  $\leq 45^{\circ}\text{F}$  (7°C) during the cool-down period;

4) Have a difference in the air temperatures between the inlet and outlet of a refrigerated condenser installed on a washer  $\geq 20^{\circ}\text{F}$  (11°C).

5) Provide a valve ~~((ing))~~ system which prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machines is open; and

6) Must not release the air-PCE-vapor stream into the atmosphere while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened.

j. Requirements for Carbon Adsorbers. Must meet all of the following requirements:

1) Have PCE measurements at the exhaust of the carbon adsorber  $\leq 100$  ppm ~~((App. B))~~; and

2) Weekly measure and record the concentration of PCE at the outlet of the carbon adsorber using a colorimetric detector tube that is accurate to within 25 ppm.

3) Begun monitoring temperature sensors by September 23, 1996, if the PCE dry cleaning system was installed prior to December 9, 1991.

#### 4. Additional Requirements for Major Area Sources.

a. If a dry cleaning system is located at a source which emits 10 tons or more of PCE annually, the source must meet additional requirements in 40 CFR Part 63, Subpart M; and

b. Must comply with sections 4.024 ~~((pg. 4-5))~~ or 4.035 ~~((pg. 4-6))~~.

#### **5. Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.**

a. It is illegal to locate a dry cleaning machine using PCE in a residential building.

b. If you installed a dry cleaning machine using PCE in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

c. In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

1. Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

2. Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to PCE vapor.

3. Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

d. The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

~~((5. A new source must continue to use BACT (App. B) after the requirements of subsection 4.02G2 are met.))~~

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

**3.03 OUTDOOR AND AGRICULTURAL BURNING. ~~((Statutory Authority: Chapter 70.94 RCW; IAW Chapter 173-425 WAC & Chapter 173-430 WAC))~~**

**A. PURPOSE.** To reduce and prevent air pollution from ~~((control))~~ outdoor and agricultural burning ~~((App. A))~~ and the resulting air pollution. ~~((Chaps. 173-425 & 173-430 WAC))~~

**B. APPLICABILITY.** Applies to all outdoor and agricultural burning on private, county, state, and federal land unless exempted or another public agency has an effective program in place for the control of outdoor and agricultural burning, and the program has been delegated in accordance with subsection 3.03I ~~((pg. 3-12))~~.

1. This section applies to burning requiring a written permit, a general rule permit, or exempted from permitting.

2. The agricultural burning portions of this section apply only to agricultural operations ~~((App. A))~~ and government agencies with burning requirements related to agriculture.

3. Firefighting training fires are a type of outdoor burning, and subsections 3.03C ~~((pg. 3-8))~~ and 3.03D ~~((pg. 3-9))~~ are applicable unless modified or granted a limited exemption in another subsection.

4. Exemptions. This section does ~~((is))~~ not apply ~~((is applicable))~~ to:

a. ~~((§))~~ Fire training at enclosed fire training facilities that are permitted under ~~((Article))~~ section 3.03E below.

b. ~~((This section does not apply to))~~ Silvicultural burning ~~((App. A))~~ which is regulated by chapter 70A.94 RCW, ~~((WCAA (App. B), chap.))~~ chapter 332-24 WAC, and the Department of Natural Resources Washington ~~((§))~~ State ~~((§))~~ Smoke ~~((§))~~ Management ~~((§))~~ Plan (SMP).

**C. GENERAL PROVISIONS FOR ALL BURNING.** The following applies to all outdoor and agricultural burning unless granted an ~~((limited or specific))~~ exemption by the APCO ~~((App. B. The I))~~ Limited exemptions granted for various types of burning are shown in table 3.03-1 ~~((and the footnotes))~~:

**1. ((Prohibition)) Areas where prohibited.** Burning is prohibited in the following areas ~~((and conditions))~~:

~~((a. Wood smoke Control Zone (App. A). Prohibited during burn bans (App. A). The area is described in app. H (pg. H-1), and shown on the map in app. I (pg. I-2).))~~

~~((b. Other Areas. Prohibited during a burn ban in any other geographic area designated by the board.))~~

~~((c. Urban Growth Areas (App. A). Prohibited after December 31, 2000, and sooner if a reasonable alternate (App. A) disposal method exists for))~~

~~((1) County designated urban growth areas; and))~~

~~((2) Cities having a population greater than 10,000 people.))~~

~~((3) Except urban growth areas for cities which have a population less than 5,000 people that are neither within nor contiguous with a nonattainment or former nonattainment area, outdoor burning is prohibited after December 31, 2006.))~~

~~((d. Yakima urban area as described in app. H (pg. H-2); the city of Selah, and the city of Sunnyside.))~~

a. Urban Growth Areas (UGA). All residential and land clearing burning is prohibited within the following UGAs:

1. Yakima

2. Selah

3. Union Gap

4. Moxee

5. Zillah

6. Granger

7. Grandview

8. Sunnyside

9. Tieton

10. Naches

b. Other Areas. All burning in any other geographic area is prohibited during a burn ban. ~~((in any other geographic area designated by the board.))~~

c. Burn Ignition. If an individual permit is required in tables 3.03-1 or 3.03-2 for any type of outdoor or agricultural burning, the fire shall not be ignited without first obtaining the permit.

d. Hours of Burning. All outdoor burning shall be conducted during daylight hours. ~~((App. A))~~

e. Burning Without a Permit or Limited Exemption. Burning is not allowed without an individual, annual, or general rule permit unless granted a limited exemption as per ~~in~~ tables 3.03-1 or 3.03-2 ~~and the footnotes for the tables~~.

## **2. Requirements.**

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Demonstration of No Reasonable Alternative. ~~((App. A))~~ Anyone applying for a burn permit must demonstrate that there is: ~~((no reasonable alternate for.))~~

1) No reasonable alternate technology or method of disposing of the organic refuse ~~((Safeguarding the environment)); and~~

2) In the case where an alternate technology or method exists, the applicant shall demonstrate that the technology or method is not economically reasonable or is more harmful to the environment than outdoor burning ~~((Economic viability)).~~

c. Minimize Adverse Effects. All burn permits issued by the ~~((authority))~~ agency shall ~~((must))~~ contain requirements that ~~((to insure that public interest in air, water and land pollution and safety to life and property is fully considered and must be designed to and))~~ minimize air pollution to the greatest extent possible ~~((as practicable)).~~ ~~((This includes the denial of permission to burn.))~~

d. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

e. Cessation of Burning.

1) During Burn Bans. No burning may be done when the APCO ~~((App. B))~~ has declared an impaired air quality condition or Ecology ~~((App. B))~~ has declared an air pollution episode as described in section 3.05 ~~((pg. 3-33)).~~

2) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must immediately start extinguishing the fire.))

2) Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations. Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, www.yakimacleanair.org Notification of the prohibition of

burning to the public shall also be accomplished via emails to:

- a) Newspapers
- b) Radio stations
- c) Television stations
- d) To all individuals who have requested email notification of burn bans; and

e) Other air agencies

3) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must immediately start extinguishing the fire.

4) Lapse Time to Legally Extinguish Fires During Burn Bans.

a) Land clearing, storm and flood debris, and orchard removal burns shall be extinguished within eight hours of notification of a burn ban.

b) All other burns shall be extinguished within three hours of the notification.

5) Extinguished Fire. A fire shall be considered extinguished when there is no visible flame or smoke coming from the fire, and the burned material can be handled with bare hands.

f. Additional Requirements. Additional requirements for various types of burning are listed in subsections 3.03D2 ((pg. 3-10)), 3.03E ((pg. 3-10)), 3.03F2 ((pg. 3-11)), and the footnotes for tables 3.03-1 ((pg. 3-17), table), 3.03-2 ((pg. 3-19)); and table 3.03-3 ((pg. 3-21)).

g. Requirements of Other Agencies. Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor and agricultural burning.

#### D. SPECIFIC PROVISIONS FOR OUTDOOR BURNING.

##### 1. Prohibitions.

a. Prohibited Materials. ((WAC 173-425-040)) The following materials are prohibited from burning:

- 1) Garbage,
- 2) Dead animals, or parts of dead animals,
- 3) Asphalt,
- 4) Petroleum products,
- 5) Paints,
- 6) Rubber products,
- 7) Plastics,
- 8) Paper other than what is necessary to start a fire,
- 9) Cardboard,
- 10) Treated wood,
- 11) Construction/demolition debris,
- 12) Metal, or
- 13) Any substance that normally emits toxic emissions, dense smoke, or obnoxious odors when burned other than natural vegetation.

b. Hauled Material. Other than firewood ((App. A)) for use in wood heaters ((App. A)), ceremonial fires, or recreational fires ((App. A)), material transported from an area prohibited for outdoor burning may not be burned in another area.

##### 2. Requirements.

a. All Outdoor Burning.

1) When the burn is primarily wood ((App. B)) greater than 12 inches in diameter, the burn must not be ignited or fed after 12:00 noon of that day ((on the ignited)).

2) Except for ceremonial (~~residential, tumbleweed~~) and recreational burning not included in general rule permits, the person doing the burning shall inform the ((authority)) agency of the location, quantity and type of material to burn, and duration for the burn prior to setting the fire.

b. Residential Burning.

1) Must be located on a non-combustible surface not less than 50 feet from buildings, fences, other combustible materials, and other fires.

2) Burn one pile at a time.

3) Pile size must be less than ((App. B)) 4ft. x 4ft. x 3ft. high.

c. Storm and Flood Debris Burning.

1) Definition: Storm and Flood Debris Burning means natural vegetation ((Material)) proposed for burning that was deposited by a storm or flood from ((debris that resulted in)) a declared emergency by a governmental authority.

2) The permit shall contain a time period for the burning.

3) The maximum time limit for this type of burning is two years after the event that deposited the debris or the date of the emergency proclamation.

4) The following variables shall be considered in determining an appropriate maximum time limit after the storm or flood event:

a) Size of the material and the amount of drying time needed to create good burning conditions with lower emissions; and

b) Time of year that the ((storm)) event occurred.

#### E. ADDITIONAL SPECIFIC PROVISIONS FOR FIRE FIGHTING TRAINING FIRES.

1. Applicability. This ((S)) subsection ((3-03E (pg. 3-10))) is applicable to any fire department, business, or organization ((App. A)) using firefighting training fires or any business using a fire to demonstrate fire equipment.

##### 2. Requirements for All Training Fires.

a. Must comply with any other permits, licenses, or approvals that are required;

b. Must not be located in an area that is declared to be in an air pollution episode or impaired air quality condition;

c. Nuisance ((App. A)) laws are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property; and

d. Notify the ((authority)) agency of the type and location of each fire prior to starting the training fire.

##### 3. Additional Requirements for Structural or Natural Vegetation Training Fires.

a. These types of training fires are not allowed for a business demonstrating fire equipment.

b. Notice of the fire must be is provided to the owners of property adjoining the property, and to the persons who potentially will be impacted prior to starting the training fire;

c. On each parcel of land where an exercise is planned each structure to be burned or not burned must be identified to the ((authority)) agency; and;

d. In compliance with ((A survey according to)) subsection 3.07E ((F (pg. 3-37))) an asbestos survey shall be completed ((must be conducted)) to determine if materials containing asbestos are present in the structures. The inspection must be documented in writing and provided ((forwarded)) to

the ~~((authority)) agency~~; ~~((and)) ((a))~~ Asbestos that is found must be removed prior to the burning.

#### 4. Additional Requirements for Aircraft Crash Rescue Fire Training.

a. Participants in these training fires must be limited to fire fighters who provide support to an airport ~~which is~~:

- 1) Certified by the FAA ~~(App-B)~~; or
- 2) ~~((Operated to-s))~~ Supports military or governmental aviation.

b. Number of training fires allowed per year without a permit is the minimum number required by FAA or other federal safety requirements.

c. The facility must use current technology and be operated in a manner that will minimize the release of air pollutants during the fire training.

d. Prior to the initial training exercise, written approval must be obtained from the ~~((authority)) agency~~.

5. **Permitting and Limited Exemptions.** The types of permits required and limited exemptions granted are shown in table 3.03-1 ~~((pg. 3-16))~~.

#### F. SPECIFIC PROVISIONS FOR AGRICULTURAL BURNING.

1. **Prohibitions.** No additional prohibitions.

#### 2. Requirements.

a. A farmer must show that the burning is an acceptable Best Management Practices (BMP) ~~((App-B))~~; or necessary to a successful operation; and there is no reasonably available practical alternative.

b. Burning is limited to natural vegetation.

c. Natural vegetation intended for agricultural burning may be transported to a stockpile site for drying and future burning providing there is no prohibition for burning at the stockpile site.

d. Burning must be done only when the wind will take the smoke away from roads, homes, population centers, and other public areas.

e. Prior to igniting a burn, the farmer must provide the ~~((authority)) agency~~ with the location, size, and type of material for each burn.

f. Farmers who fail to report burns may have an annual permit canceled.

#### G. LIMITED EXEMPTIONS.

##### 1. All Burning.

a. Individual Permit Required. The specific exemptions will be established in the permit after discussing the burn, the prohibitions, and the requirements with the proponent.

b. General Rule Permits and Permits Exemptions ~~((Not Required))~~. Limited exemptions are identified in subsections 3.03G2 & 3 ~~((pg. 3-12))~~, table 3.03-1 ~~((pg. 3-16))~~, the footnotes for these tables, and general rule permits located at the end of this section.

##### 2. Outdoor Burning.

a. Diseased animals may be burned when a health officer orders the burning of all or part of the animal or other infected material to stop the spread of a disease infestation.

b. Dangerous materials may be burned when a fire protection authority orders the burning of dangerous materials because there is no approved alternative method of disposal.

3. **Agricultural Burning.** All exemptions are identified elsewhere.

H. **SPECIFIC EXEMPTIONS.** The APCO ~~((App-B))~~ may grant a written ~~((specific))~~ exemption for a subsection if the ~~((specific))~~ exemption will:

1. Create no more air pollution than the requirements of the subsection; and

2. Create no adverse environmental, health, or public safety effects;

3. The document granting the specific exemption shall ~~must~~ contain:

a. The conditions of the specific exemption;

b. A duration of no more than 30 consecutive days; and

c. The signature of the owner or operator of the property indicating agreement to the conditions of the specific exemption.

4. Specific exemptions will not be extended.

I. **Burn PROGRAM Partnerships DELEGATIONS.** Table 3.03-2 ~~((pg. 3-18))~~ shows which types of entities agencies or businesses the ~~((authority)) agency~~ may use to partner with ~~((use in order))~~ to efficiently ~~to~~ implement outdoor and agricultural burning programs if the cooperating entity ~~((agency/business))~~ agrees to comply ~~((ies))~~ with this subsection.

1. **Permitting for ((by)) Other ((Agencies)) Entities.** A local, county, state, or federal agency may qualify for a residential and recreational outdoor burning permit program if:

a. The entity ((agency)) agrees to accept all of the outdoor burning program available for permitting as shown in table 3.03-2 ~~((pg. 3-18))~~;

b. The entity ((agency)) enters into a written agreement with the ~~((authority)) agency~~ to adopt and enforce the regulations of the ~~((authority)) agency~~;

c. The ~~((authority)) agency~~ finds that entity agency program is as or more effective;

d. The entity ((agency)) provides an annual report ~~((s))~~ for the previous year by February 1st of each year ~~((which describe))~~ describing:

1) Total number of permits issued;

2) Total number of complaints received;

3) Total number of NOV ~~((App-B))~~ issued;

4) Total number of penalties issued;

5) Total dollar receipts;

6) Suggestions for improvement of the program in the future; and

7) An estimate of the total amount of material burned.

##### 2. Issuing Agents.

a. Local, county, state, or federal governmental agencies or businesses may be delegated the authority to issue residential burning permits after signing a written agreement defining the administrative procedures for the issuance of permits.

b. The compliance and enforcement responsibility for these permits remains with the agency ~~((authority))~~.

c. Violations or non-performance of the agreement may result in the cancellation of the vending agreement or a citation issued under article 5.

J. **PERMITTING BY THE AGENCY ((AUTHORITY)).** The ~~((authority)) agency~~ shall use individual, annual, or general rule permits to authorize all forms of burning which require permits.

1. **Individual Permits.** Written or verbal individual permits shall be used when:

- a. Permits are required by law or regulation;
- b. The permits are needed for specific burning events;
- c. The ~~((authority))~~ agency believes the proposed burn needs specific requirements or prohibitions that are not available from an annual or general rule permit;
- d. The proposed burn cannot meet all of the conditions of an annual or general rule permit, or
- e. The permit fee is based on the specific conditions of the burn.

**2. Annual Permits.** Written annual permits shall be used when;

- a. Permits are required by law or regulation;
- b. All the requirements for burning during the year can be identified in the permit; and
- c. The same annual permit fee is charged for all similar permits.

**3. General Rule Permits.** General rule permits are appropriate~~((d))~~ when an individual or annual permit is not required, but the ~~((authority))~~ agency believes some controls are needed to minimize air pollution.

- a. General rule permits have no fees.
- b. A person using a general rule permit must comply with all conditions of the permit or obtain an individual or annual permit.

c. The following general rule permits are adopted and included in the regulation:

- 1) General Rule Permit No. 3.03-1, Structural Fire Training Outside of Urban Growth Areas ~~((pg-3-22))~~;
- 2) General Rule Permit No. 3.03-2, Wildland Training Fires ~~((pg-3-24))~~;
- 3) General Rule Permit No. 3.03-3, Flammable Liquid or Gas Training Fires ~~((pg-3-26))~~;
- 4) General Rule Permit No. 3.03-4, Other Training Fires ~~((pg-3-28))~~; and
- 5) General Rule Permit No. 3.03-5, Large Recreational Fires ~~((pg-3-30))~~;

**4. Specific Permit Conditions.** Special permit conditions maybe added to a written or general rule permit to include additional requirements beyond the requirements of section 3.02 ~~((3-03))~~. They may include any of the following:

- a. All Burning.
  - 1) Restricting the hours of burning;
  - 2) Restricting burning to a defined season;
  - 3) Restricting the size of fires;
  - 4) Imposing requirements for good combustion practice;

or

- 5) Restricting burning to specified weather conditions.
- 6) The permittee agrees to allow the APCO to enter his/her property to conduct an investigation as defined in subsection 2.01C ~~((pg-2-1))~~.

b. Agricultural Burning.

- 1) Requiring the use of all or part of the agricultural burning Best Management Practices (BMPs) approved ~~((established))~~ by the Agricultural Burning Practices and Research Task Force established under RCW 70A.94.6528 ~~((ag task force (App. A))~~.

2) Encouraging the use of locally approved BMPs for specific crops.

**5. Permit Duration.**

a. Annual permits expire ~~((Dec.))~~ December 31st of the ~~((current))~~ calendar year they were issued.

b. General rule permits adopted into the regulation have an indefinite duration. These remain available for use until rescinded or modified by the regulation adoption process.

c. All other permits expire after 30 days ~~((maximum))~~ from the date of issuance, unless approved for an alternate duration.

d. Permits other than annual permits maybe extended for an additional 30 days for due cause by the APCO.

**6. Permit Conditions Added after Issuance.** If additional limitations are needed to prevent air pollution and/or protect property, health, safety, and comfort of persons from the effects of burning;

a. The ~~((authority))~~ agency shall amend an individual or annual permit; and

b. The ~~((authority))~~ agency must notify the permittee or responsible person of the limitations.

c. Any limitation imposed will become a condition of the permit.

**7. Permit Application Process.** Permit applications are available from the ~~((authority))~~ agency during normal working hours. The application may be submitted in person or by mail, and it must be accompanied by the application fee when one is required.

**K. FEES.**

1. Any person granted an individual permit shall pay a fee as shown in the current fee schedule adopted by the board.

2. General rule permits have no fees.

3. Annual agricultural burning permit fees are non-refundable unless the permittee can establish and the ~~((authority))~~ agency agrees that the following events happened:

- a. The permitted agricultural burning did not occur;
- b. The need for the burning was replaced by another treatment; and
- c. The burning will not occur in the future.

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

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

**Table 3.03-1 Limited Exemptions, Types of Permitting, and Specific Requirements for All Types of Burning.**  
See footnotes at the end of the table.

Type of Burning	Type of Burning Permit Required <b>A</b>	Types of Burning Where Limited Exemptions Are Granted		
		Prohibited Areas Subsection 3.03C1 (pg. 3-8) <b>b</b>	Hours of Burning Subsection 3.03C1f (pg. 3-8) <b>e</b>	Prohibited Materials Subsection 3.03D1a & F2b (pg. 3-9 & 3-11) <b>d</b>
<b>Outdoor Burning</b>				
1. <u>Indian</u> ((C)) ceremonial fires	Individual	1/	1/	No
2. Firefighting training fires				
2.1 Structural training fires		Yes	Yes	2/
2.1.1 Inside an urban growth area	Individual	Yes	Yes	2/
2.1.2 Outside an urban growth area	GRP No. 3.03 - 1	Yes	Yes	No
2.2 Wildland training fires	GRP No. 3.03 - 2	Yes	Yes	2/
2.3 Flammable liquid or gas training fires	GRP No. 3.03 - 3	Yes	Yes	2/
2.4 Other training fires (10'x10'x8')	GRP No. 3.03 - 4	Yes	Yes	Yes
2.5 Aircraft crash rescue training fires	N/A			
3. Land clearing fires	Individual	No	1/	No
4. Rare & endangered plant regeneration fires.	Individual	1/	1/	No
5. Recreational fires				
5.1 Large recreational fires <u>greater than (&gt;3'x2')</u>	GRP No. 3.03 - 5	3/ Yes	4/ Yes	No
5.2 ((Other f)) Recreational fires smaller than or equal (<3'x2')	None	5/		
5.3 Home barbecues	None		Yes	
6. Residential/ <u>Tumbleweed</u>	((Annual)) Residential	No	No	No
7. Silvicultural	N/A	N/A	N/A	N/A
8. Storm or flood debris	Individual	1/	1/	NO
((9. Tumbleweed	<b>None</b>	<b>No</b>	<b>No</b>	<b>No</b> )
((10.)) <u>9. Weed abatement</u>	Individual	1/	No	No
((11.)) <u>10. Other outdoor burning</u> 6/	Individual	1/	1/	1/
<b>Agricultural Burning</b>				
((12.)) <u>11.</u>	None, 7/	((No)) <u>Yes</u>	8/	No
((13.)) <u>12.</u>	None, 7/	((No)) <u>Yes</u>	8/	No
((14.)) <u>13. Orchard Management</u>	None, 7/	((No)) <u>Yes</u>	8/	No
((14.1)) <u>13.1 Orchard Prunings</u>	Individual	<u>No</u>	1/	
((14.2)) <u>13.2 Orchard Removal</u>				
((15.)) <u>14. Annual agricultural burning</u>	Annual	((No)) <u>Yes</u>	No 8/	No

Type of Burning	Type of Burning Permit Required <b>A</b>	<del>Types of Burning Where Limited Exemptions Are Granted</del>		
		Prohibited Areas Subsec- tion 3.03C1 (pg. 3-8) <b>b</b>	Hours of Burning Sub- section 3.03C1f (pg. 3-8) <b>e</b>	Prohibited Materials Subsection 3.03D1a & F2b (pg. 3-9 & 3-11) <b>D</b>
<del>((16-))</del> 15. Other agricultural burning 9/	Individual	1/	8/	1/
<b>Training Fires Not Considered Outdoor Burning</b>				
<del>((17-))</del> 16. Fires Conducted inside a fire training facility subject to a NSR approval order	None	N/A	N/A	N/A

Footnotes for table 3.03-1:

- Yes - Limited exemption is granted.
- No - Limited exemption is not granted
- None - No permit is required
- Individual - Individual permit required for a specific burn.
- N/A - Not Applicable because the ~~((authority))~~ agency does not regulate this type of burning GRP - General Rule Permit.
- Annual - Annual residential or agricultural burning permit.
- 1/ ~~Type of burning ((S))~~ shall be identified in the permit issued by the ~~((authority))~~ agency.
- 2/ The burning of prohibited materials is limited to those materials and quantities needed for effective training.
- 3/ Nonprofit organizations are granted a limited exemption. There is no exemption for other groups or persons.
- 4/ A limited exemption for the hours of burning is granted, but the fire must be extinguished within three hours after the end of the event or use.
- 5/ Fueled only with charcoal, LP gas, natural gas, pellets, or natural fuels.

- 6/ Includes any type of outdoor burning not included in the table.
- 7/ Incidental quantities without permitting.
- 8/ When night burning is accepted by the Agricultural Burning Practices and Research Task Force ~~((ag task force ((App. A)))~~ as a BMP ~~((App. B)))~~.
- 9/ Includes any type of agricultural burning not included in the table

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

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

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

**Table 3.03-2 ((Forms of)) Agency Delegation for All Types of Burning.**

See footnotes at the end of the table.

Type of Burning	Permitting Information				
	Delegated to the <del>((Authority))</del> Agency <b>a</b>	Type of Burning Permit Required <b>b</b>	<del>((Form of Delegation from the Authority))</del> Delegation Retained by the <del>((Authority))</del> Agency <b>e</b>	Permitting Program Available <b>d</b>	Permit Vending <b>E</b>
<b>Outdoor Burning</b>					
1. <u>Indian</u> <del>((E))</del> ceremonial fires	Yes	Individual	<del>((No))</del> Yes	Yes	No
2. Firefighting training fires	Yes		Yes	No	No
2.2 Structural training fires					
2.1.1 Inside an urban growth area		Individual			
2.1.2 Outside an urban growth area		GRP No. 3.03- 1			

Type of Burning	Permitting Information				
	Delegated to the <del>((Authority))</del> Agency <del>(a)</del>	Type of Burning Permit Required <del>(b)</del>	<del>((Form of Delegation from the Authority))</del>		
<del>Delegation Retained by the ((Authority))</del> Agency <del>(e)</del>			Permitting Program Available <del>(d)</del>	Permit Vending <del>(E)</del>	
2.6 Wildland training fires 2.7 Flammable liquid or gas training fires 2.8 Other training fires (10'x10'x8') 2.2 Aircraft crash rescue training fires		GRP No. 3.03 - 2 GRP No. 3.03 - 3 GRP No. 3.03 - 4 None			
3. Land clearing	Yes	Individual	Yes	No	No
4. Rare & endangered plant regeneration fires	Yes	Individual	Yes	No	No
5. Recreational fires 5.1 Large recreational fires 5.2 <del>Other R</del> recreational fires 5.3 Home barbecues	Yes	GRP No. 3.03 - 5 None None	Yes	No	No
6. Residential/ <u>Tumbleweed</u>	Yes	Annual	<del>((No))</del>	Yes	Yes
7. Silvicultural	No	N/A	N/A	N/A	N/A
8. Storm or flood debris	Yes	Individual	Yes	No	No
<del>((9. Tumbleweed</del>	<del>Yes</del>	<del>None, 1/</del>	<del>No</del>	<del>Yes</del>	<del>No))</del>
<del>((10))</del> 9. Weed abatement	Yes	Individual	<del>((No))</del>	Yes	No
<del>((11))</del> 10. Other outdoor burning 2/	Yes	Individual	Yes	No	No

	Delegated to the <del>((Authority))</del> Agency <del>((a))</del>	Type of Burning Permit Required <del>((b))</del>	<del>((Form of Delegation from the Authority))</del>		
			<del>Delegation Retained by the ((Authority))</del> Agency <del>((e))</del>	Permitting Program Available <del>((d))</del>	Permit Vending <del>((E))</del>
<b>Agricultural Burning</b>					
1 <del>((2))</del> 1. Fence rows and windblown vegetation	Yes	None, 3/	Yes	No	No
1 <del>((3))</del> 2. Irrigation or drainage ditches	Yes	None, 3/	Yes	No	No
1 <del>((4))</del> 3. Orchard management 13.1 Orchard prunings 13.2 Orchard removal	Yes	None, 3/ Individual	Yes	No	No
1 <del>((5))</del> 4. Annual agricultural burning	Yes	Annual	Yes	No	No
1 <del>((6))</del> 5. Other agricultural burning 4/	Yes	Yes	Yes	No	No
<b>Training Fires Not Considered Outdoor Burning</b>					
1 <del>((7))</del> 6. Fires conducted inside a fire training facility subject to a NSR approval order	Yes	None	Yes	No	No



Footnotes for table 3.023-2:

- Yes - The ~~((authority))~~ agency is delegated responsibility for this type of burning, a burning permit is required, or this type of burning may be delegated to another agency or business.
- No - The ~~((authority))~~ agency is not delegated responsibility for this type of burning, or this type of burning may not be delegated to another agency or business.
- None - No permit is required
- Individual - Individual permit required for a specific burn.
- N/A - Not Applicable because the ~~((authority))~~ agency does not regulate this type of burning GRP - General Rule Permit.

- Annual - Annual residential or agricultural burning permit.
- 1/ Applies when only tumbleweeds are burned in the fire.
- 2/ Includes any type of outdoor burning not included in the table.
- 3/ Incidental quantities allowed without permitting.
- 4/ Includes any type of agricultural burning not included in the table.

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

**Table 3.03-3 Notification Requirements Before Burning**

See footnotes at the end of the table

Type of Burning	Type of Burning Permit Required <del>a</del>	Prior Notification Required Before Igniting the Fire	
		<del>((Authority))</del> Agency <del>b</del>	Neighbors <del>c</del>
<b>Outdoor Burning</b>			
1. <del>Indian ((€))</del> ceremonial fires	Individual	No	No
2. Firefighting training fires			
2.1 Structural training fires			
2.1.1 Inside an urban growth area	Individual	Yes	1/
2.1.2 Outside an urban growth area	GRP No. 3.03 - 1	Yes	Yes, 2/
2.2 Wildland training fires	GRP No. 3.03 - 2	Yes	Yes, 2/
2.3 Flammable liquid or gas training fires	GRP No. 3.03 - 3	Yes	Yes, 2/
2.4 Other training fires	GRP No. 3.03 - 4	Yes	Yes, 2/
2.5 Aircraft crash rescue training fires	N/A	Yes, 3/	No
3. Land clearing fires	Individual	Yes	1/
4. Rare & endangered plant regeneration fires	Individual	Yes	1/
5. Recreational fires			
5.1 Large recreational fires	GRP No. 3.03 - 5	Yes	Yes
5.2 <del>((Other r))</del> Recreational fires	None	No	No
5.3 Home barbecues	None	No	No
6. Residential/ <u>Tumbleweed</u>	Annual	No	No
7. Silvicultural	N/A	N/A	N/A
8. Storm or flood debris	Individual	Yes	1/
<del>((9. Tumbleweed</del>	<del>None</del>	<del>No</del>	<del>No))</del>
9. <del>((+0))</del> Weed abatement	Individual	Yes	1/
10. <del>((+1))</del> Other outdoor burning	Individual	Yes	1/
<b>Agricultural Burning</b>			
11. <del>((+2))</del> Fence rows and windblown vegetation	None, 4/	No	No
12. <del>((+3))</del> . Irrigation or drainage ditches	None, 4/	No 6/	No
13. <del>((+4))</del> Orchard management			
13.1 Orchard prunings	None, 4/	No 6/	No
13.2 Orchard removal	Individual	Yes	1/
14. <del>((+5))</del> Annual agricultural burning	Annual	Yes	No
15. <del>((+6))</del> Other agricultural burning	Individual	Yes	1/

Type of Burning	Type of Burning Permit Required <b>a</b>	Prior Notification Required Before Igniting the Fire	
		<del>((Authority))</del> <u>Agency <b>b</b></u>	Neighbors <b>e</b>
<b>Training Fires Not Considered Outdoor Burning</b>			
<u>16.</u> <del>((17))</del> Fires conducted inside a fire training facility subject to a NSR approval order	None	5/	5/

Footnotes:

- 1/ As required in the individual permit.
- 2/ As required by the general rule permit.
- 3/ Written approval required prior to the first training exercise.
- 4/ Incidental quantities without a permit.
- 5/ As required in the NSR approval order.
- 6/ Orchard prunings/irrigation or drainage ditches may not be burned during an air pollution episode or any stage of impaired air quality.

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

**GENERAL RULE PERMIT No. 3.03-1**

**STRUCTURAL FIRE TRAINING OUTSIDE OF URBAN GROWTH AREAS**

**A. PURPOSE.** To control emissions from structural training fires and to satisfy the permitting requirements by a general rule.

**B. APPLICABILITY.**

**1.** Any fire department (~~((App. A))~~) planning to conduct structural training fire outside of an urban growth area.

**2.** The owner or operator of the land where the training fire is conducted.

**C. REFERENCES.** Sections 3.01 (~~((pg. 3-3))~~), 3.03 (~~((pg. 3-7))~~), 3.05 (~~((pg. 3-33))~~), and 3.07 (~~((pg. 3-36))~~).

**D. DURATION.** Indefinite.

**E. REQUIREMENTS.**

**1. General.** (~~((Subsection 3.03C, pg. 3-8))~~)

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

c. (~~(During))~~ Burn Bans. No burning may be done when the APCO has declared an impaired air quality condition or Ecology has declared an air pollution episode as described in section 3.05 (~~((pg. 3-33))~~).

1) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must extinguish the fire.

2) (~~(Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations))~~ Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, www.yakimacleanair.org Notification of the prohibition of burning to the public shall also be accomplished via emails to:

- a) Newspapers

- b) Radio stations
- c) Television stations
- d) To all individuals who have requested email notification of burn bans

e) Other air agencies

3) Lapse Time. The fire must be extinguished within three hours of notification of a burn ban.

**2. Specific.** (~~((Subsections 3.03D & E, pg. 3-9 & 3-10))~~)

a. Prohibited Materials. The burning of prohibited materials listed in subsection 3.03D1a (~~((pg. 3-9))~~) is limited to those materials and quantities needed for effective structural training fire.

b. Nuisance Rules. These rules are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property

c. Structure Identification. On each parcel of land where an exercise is planned each structure to be burned or not burned must be identified to the (~~((authority))~~) agency.

d. Asbestos Survey and Removal. A survey (~~((is))~~) must be conducted in accordance with subsection 3.07E (~~((3.0F (pg. 3-37))~~) to determine if materials containing asbestos are present in the structures, ~~the survey is~~ documented in writing and forwarded to the (~~((authority))~~) agency.

e. Asbestos Removal. Any Asbestos Containing Material (ACM) that is found must be (~~((to))~~) removed prior to the burning.

**F. NOTIFICATION.** (~~((Subsection 3.03D2a2, pg. 3-10))~~) Prior to the start of the training the fire department conducting the training fire shall inform:

- 1. The (~~((authority))~~) agency of the location, quantity and type of material to burn, and duration for the training fire; and
- 2. The owners of property adjoining the property, and persons who (~~((potentially))~~) will be potentially impacted.

**G. REQUIREMENTS OF OTHER AGENCIES.** (~~((Subsection 3.03C2h, pg. 3-9))~~) Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor burning.

**H. VIOLATIONS.** Failure to comply with the requirements of this general rule permit is a violation, and may be resolved by, but not limited to (~~((and))~~) the following (~~((are the remedies for a violation))~~):

- 1. Voiding any further training fires under general rule permits and obtaining individual written permits with the appropriate requirements and fees and/or:
- 2. Compliance and enforcement action under (~~((a))~~) Article 5.

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

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**GENERAL RULE PERMIT NO. 3.03-2  
WILDLAND TRAINING FIRES**

**A. PURPOSE.** To control emissions from wildland training fires and to satisfy the permitting requirements by a general rule.

**B. APPLICABILITY.**

1. Any fire department planning to conduct wildland training fires.

2. The owner or operator of the land where the training fire is conducted.

3. This general rule permit is not applicable to the following:

- Silvicultural burning administered by the DNR, or;
- Burning structures at the location of a wildland training fire.

**C. REFERENCES.** Sections 3.01 (~~((pg. 3-3))~~), 3.03 (~~((pg. 3-7))~~), and 3.05 (~~((pg. 3-33))~~).

**D. DURATION.** Indefinite.

**E. REQUIREMENTS.**

**1. General.** (~~((Subsection 3.03C, pg. 3-8))~~)

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

c. During Burn Bans. No burning may be done when the APCO has declared an impaired air quality condition or Ecol-ogy has declared an air pollution episode as described in section 3.05 (~~((pg. 3-33))~~).

1) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must extinguish the fire.

2) (~~(Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations.)~~) Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, www.yakimacleanair.org. Notification of the prohibition of burning to the public shall also be accomplished via emails to:

- Newspapers
- Radio stations
- Television stations
- To all individuals who have requested email notification of burn bans

e. Other air agencies

3) Lapse Time. The fire must be extinguished within eight hours of notification of a burn ban.

**2. Specific.** (~~((Subsections 3.03D & E, pg. 3-9 & 3-10))~~)

a. Prohibited Materials. The burning of prohibited materials listed in subsection 3.03D1a (~~((pg. 3-9))~~) is prohibited.

b. Nuisance Rules. These rules are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property

c. Land Identification. Each parcel of land where an exercise is planned must be identified to the (~~(authority))~~ agency.

**F. NOTIFICATION.** (~~((Subsections 3.03D2a2, pg. 3-10))~~) Prior to the start of the training fire the fire department conducting the training shall inform:

1. The (~~(authority))~~ agency of the location, quantity and type of material to burn, and duration for the training fire; and

2. The owners of property adjoining the property persons who potentially will be impacted.

**G. REQUIREMENTS OF OTHER AGENCIES.** (~~((Subsection 3.03C2h, pg. 3-9))~~) Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor burning.

**H. VIOLATIONS.** Failure to comply with the requirements of this general rule permit is a violation, and may be resolved by, but not limited to the following (~~((and the following are the remedies for a violation))~~):

1. Voiding any further training fires under general rule permits and obtaining individual written permits with the appropriate requirements and fees and/or:

2. Compliance and enforcement action under (~~(a))~~ Article 5.

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

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**GENERAL RULE PERMIT NO. 3.03-3  
FLAMMABLE LIQUID OR GAS TRAINING FIRES**

**A. Purpose.** The purpose of this section is to (~~((To))~~) control emissions from flammable or gas liquid fires for training or demonstrating the proper use of fire equipment and to satisfy the permitting requirements by a general rule.

**B. APPLICABILITY.** This section applies to:

1. Any fire department conducting flammable liquid or gas training fires;

2. Any company demonstrating the use of fire suppression equipment; or

3. Any company or organization training employees in the use of fire extinguisher; and

4. The owner or operator of the land where the training fire is conducted.

**C. REFERENCES.** Sections 3.01 (~~((pg. 3-3))~~), 3.03 (~~((pg. 3-7))~~), and 3.05 (~~((pg. 3-33))~~).

**D. DURATION.** Indefinite.

**E. REQUIREMENTS.**

**1. General.** (~~((Subsection 3.03C, pg. 3-8))~~)

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

c. (~~(During))~~ Burn Bans. No burning may be done when the APCO has declared an impaired air quality condition or

Ecology has declared an air pollution episode as described in section 3.05 ~~((pg. 3-33))~~.

1) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must extinguish the fire.

2) ~~(Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations))~~. Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, [www.yakimacleanair.org](http://www.yakimacleanair.org) Notification of the prohibition of burning to the public shall also be accomplished via emails to:

- a. Newspapers;
- b. Radio stations;
- c. Television stations;
- d. To all individuals who have requested email notification of burn bans; and

e. Other air agencies.

3) Lapse Time. The fire must be extinguished within 15 minutes of notification of a burn ban.

**2) Specific.** ~~((Subsections 3.03D & E, pg. 3-9 & 3-10))~~

a) Prohibited Materials. The burning of prohibited materials listed in subsection 3.03D1a ~~((pg. 3-9))~~ is limited to those materials and quantities needed for effective structural training fire.

b) Nuisance Rules. These rules are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property

c) Container for the Fire. The training fire is contained within a noncombustible container or apparatus 4 ft. x 4 ft. in size.

**F. NOTIFICATION.** ~~((Subsection 3.03D2a2, pg. 3-10))~~

Prior to the start of the training the person doing the training or demonstration shall inform:

1. The ~~((authority))~~ agency of the location, quantity and type of material to burn, and duration for the training fire; and
2. The owners of property adjoining the property, and to the persons who potentially will be impacted.

**G. REQUIREMENTS OF OTHER AGENCIES.** ~~((Subsection 3.03C2h, pg. 3-9))~~ Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor burning.

**I. VIOLATIONS.** Failure to comply with the requirements of this general rule permit is a violation, and may be resolved by, but not limited to ((and)) the following ((and the following are the remedies for a violation)):

1. Voiding any further training fires under general rule permits and obtaining individual written permits with the appropriate requirements and fees and/or:

2. Compliance and enforcement action under ~~((a))~~ Article 5.

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

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

## GENERAL RULE PERMIT NO. 3.03-4

### OTHER TRAINING FIRES

**A. PURPOSE.** To control emissions from other training fires and to satisfy the permitting requirements by a general rule.

#### B. APPLICABILITY.

**1.** Any fire department planning to conduct ~~((an))~~ training fire < 10 ft. x 10 ft. x 8 ft. high in size which is not covered by another general rule permit; and

**2.** The owner or operator of the land where the training fire is conducted.

**3.** This general rule permit is not applicable for training fires which do not meet all the requirements of this general rule.

**C. REFERENCES.** Sections 3.01 ~~((pg. 3-3))~~, 3.02 ~~((pg. 3-7))~~, and 3.05 ~~((pg. 3-33))~~.

**D. DURATION.** Indefinite.

#### E. REQUIREMENTS.

**1. General.** ~~((Subsection 3.03C, pg. 3-8))~~

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

c. During Burn Bans. No burning may be done when the APCO has declared an impaired air quality condition or Ecology has declared an air pollution episode as described in section 3.05 ~~((pg. 3-33))~~.

1) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must extinguish the fire.

2) ~~(Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations.))~~ Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, [www.yakimacleanair.org](http://www.yakimacleanair.org) Notification of the prohibition of burning to the public shall also be accomplished via emails to:

a. Newspapers

b. Radio stations

c. Television stations

d. To all individuals who have requested email notification of burn bans

e. Other air agencies

3) Lapse Time. The fire must be extinguished within three hours of notification of a burn ban.

**2. Specific.** ~~((Subsections 3.03D & E, pg. 3-9 & 3-10))~~

a. Prohibited Materials. The burning of prohibited materials listed in subsection 3.03D1a ~~((pg. 3-9))~~ is limited to those materials and quantities needed for effective training fire.

b. Structures. The burning of any structure under this general rule permit is prohibited.

c. Nuisance Rules. These rules are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property.

**F. NOTIFICATION.** ~~((Subsections 3.03D2a2, pg. 3-10))~~  
Prior to the start of the training fire the fire department shall inform:

1. The ~~((authority))~~ agency of the location, quantity and type of material to burn, and duration for the training fire; and

2. The owners of property adjoining the property, and to the persons who potentially will be impacted.

**G. REQUIREMENTS OF OTHER AGENCIES.** ~~((Subsection 3.03C2h, pg. 3-9))~~ Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor burning.

**J. VIOLATIONS.** Failure to comply with the requirements of this general rule permit is a violation, ~~((and may be resolved by, but not limited to ((and)) the following and the following are the remedies for a violation))~~:

1. Voiding any further training fires under general rule permits and obtaining individual written permits with the appropriate requirements and fees and/or:

2. Compliance and enforcement action under ~~((a))~~ Article 5.

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

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

#### GENERAL RULE PERMIT NO. 3.03-5 LARGE RECREATIONAL FIRES

**A. PURPOSE.** To control emissions from large recreational fires ~~and fires at exhibits~~, and to satisfy the permitting requirements by a general rule.

**B. APPLICABILITY.** This general rule is applicable for any ~~((a))~~ recreational ~~((or exhibition))~~ fire greater than ~~((>))~~ 3 feet ~~((ft.))~~ in diameter and 2 feet ~~((ft.))~~ high which is intended for any of the following uses:

1. Nonprofit organizations conducting social, athletic, or religious events;

2. Persons having a recreational fire in a location that is not prohibited; or

3. Persons using fires for exhibits at public events; and

4. The rule is applicable to the owner or operator of the land where the large recreational fire occurs.

**C. REFERENCES.** Sections 3.01 ~~((pg. 3-3))~~, 3.03 ~~((3.023 (pg. 3-7))~~), and 3.05 ~~((pg. 3-33))~~.

**D. DURATION.** Indefinite.

**E. REQUIREMENTS.**

**1. General.** ~~((Subsection 3.03C, pg. 3-8))~~

a. Confirmation of Daily Burning Status. Prior to igniting the fire and each subsequent day, the person supervising the fire must confirm the burn ban status.

b. Supervision of the Fire. The fire must be supervised by a person who is responsible for and capable of extinguishing the fire. The fire must not be left unattended.

c. During Burn Bans. No burning may be done when the APCO has declared an impaired air quality condition or Ecology has declared an air pollution episode as described in section 3.05 ~~((pg. 3-33))~~.

1) Extinguishing the Fire. When burning is prohibited the person responsible for the fire must extinguish the fire.

2) ~~Notification. Notification of the prohibition of burning is done by publishing a notice in a newspaper of general circulation in the area, and broadcasting the notice on radio or television stations.)~~ Public Notification of Burn Bans. The agency shall immediately notify the public of any burn ban by announcement on the agency's website, [www.yakimacleanair.org](http://www.yakimacleanair.org) Notification of the prohibition of burning to the public shall also be accomplished via emails to:

f. Newspapers

g. Radio stations

h. Television stations

i. To all individuals who have requested email notification of burn bans

j. Other air agencies

3) Lapse Time. The fire must be extinguished within three hours of notification of a burn ban.

**2. Specific.** ~~((Subsections 3.03D & E, pg. 3-9 & 3-10))~~

a. Prohibited Materials. The burning of prohibited materials listed in subsection 3.03D1a ~~((pg. 3-13))~~ is prohibited.

b. Prohibited Areas. A limited exemption for subsection 3.03C1 ~~(pg. 3-8)~~ may be granted by the APCO if the proponent presents an acceptable proposal.

c. Prohibited Hours.

1) Persons conducting these types of fires are granted a limited exemption from subsection 3.03C1 ~~((pg. 3-8))~~ to conduct the fire after sunset, ~~but~~

2) The fire must be extinguished within three hours after the end of the event or use.

d. Nuisance Rules. These rules are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property

e. Location of Fire. Located on a non-combustible surface not less than 50 feet from buildings, fences, other combustible materials, and other fires or 500 ft. from forest slash.

f. Maximum Size of the Fire. The maximum size of the fire is 10 ft. x 10 ft. x 8 ft.

**F. NOTIFICATION.** ~~((Subsection 3.03D2a2, pg. 3-10))~~

Prior to the start of the large recreational fire the person conducting the fire shall inform:

1. The ~~((authority))~~ agency of the location, quantity and type of material to burn, and duration for the fire; and

2. The owners of the adjoining property and the persons who potentially will be impacted.

**G. REQUIREMENTS OF OTHER AGENCIES.** ~~((Subsection 3.03C2h, pg. 3-9))~~ Any person responsible for fires must abide by all rules and procedures set by other agencies having any jurisdiction over outdoor burning.

**K. VIOLATIONS.** Failure to comply with the requirements of this general rule permit is a violation, and may be resolved by, but not limited to and the following ~~((and the following are the remedies for a violation))~~:

1. Voiding any further recreational or exhibition fires under general rule permits and obtaining individual written permits with the appropriate requirements and fees and /or:

2. Compliance and enforcement action under ~~((a))~~ Article 5.

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

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

### 3.04 WOOD HEATERS

**A. PURPOSE.** To define a program to control and reduce wood smoke emissions from wood heaters. In this regulation a wood stove is a type of wood heater. The term "wood stove" does not include wood cook stoves.

**B. APPLICABILITY.** This section applies to any solid fuel burning device which, as defined by RCW 70A.94.453, burns wood, wood products, or other nongaseous or non-liquid fuels, ~~(and is)~~ including those rated less than one million British thermal unit (Btu) per hour. ~~((as defined by RCW 70.94.453-))~~

### C. SALES, ADVERTISEMENT, AND INSTALLATION OF WOOD HEATERS.

#### 1. Restrictions on Advertisement and Sale.

a. Uncertified wood heaters shall not be advertised or sold.

b. Any wood heater offered for sale shall meet the following PM ~~((App. A))~~ emission standards:

(1) Catalytic wood heaters less than or equal to ~~((≤))~~ 2.5 grams/hr.

(2) All other wood heaters less than or equal to ~~((≤))~~ 4.5 grams/hr.

**2. Restrictions on Installation.** The enforcement of the installation requirements may also be enforced by other agencies.

**3. Educational Materials.** Retailers who sell new wood heaters must provide educational materials to customers. The educational information should include that opacity levels of ten percent or less can be achieved through proper operation. If necessary, the retailer should verbally explain the educational materials to assure that the purchaser understands the information.

**4. Installation of Uncertified Wood Heaters.** ~~((App. B))~~ It is unlawful to install an uncertified wood heater, unless granted a limited exemption in subsection 3.04D ~~((pg. 3-32))~~, in new or existing buildings or structures. Uncertified wood heaters installed after January 1, 1992, are a violation of this subsection and must be promptly removed from the structure.

**5. Sale and Disposal of Uncertified Wood Heaters.** When an uncertified wood heater is to be permanently removed from its location it shall be made inoperable. A removed uncertified wood heater shall not be sold, bartered, traded, or given away for a purpose other than recycling of the materials.

**D. LIMITED EXEMPTIONS.** The following wood heaters are granted a limited exemption from the requirements of subsections 3.04 ~~((3.04C4 & 5 (pg. 3-32))~~):

~~((1. Boilers (App. A);))~~

~~((2. Furnaces (App. A);))~~

**1. Antique Wood Stoves and Heaters.** An ~~((A))~~ antique wood ~~((cookstove and heaters is any wood heater))~~ manufactured prior to 1940 ~~((may be installed and used in the manner~~

~~of their original design))~~. Antique wood heaters which are currently installed, may be removed and re-installed in the same structure from which removed when part of an approved renovation. The device must be used in the same manner for which originally designed. New installation of an antique wood heater that does not meet the certification or emission limits of chapter 173-433 WAC is prohibited. ~~((1997 UBC, WAC 51-40-510.3) (App. B))~~.

**2. Historic Sites.** Any building or structure listed on the National Register of Historic Sites or on the Washington State Register of Historic Places is allowed to burn wood, coal, or wood products in the same manner as when it was a functional facility. Use will not be permitted during a burn ban as described in section 3.05 ~~((pg. 3-33))~~

**3. Existing Uncertified Wood Heater.** Owners of uncertified wood heaters installed prior to January 1, 1992 may continue to use these devices at the original locations as long as they meet the provisions of the general requirements in subsection 3.04E ~~((pg. 3-33))~~

### E. GENERAL REQUIREMENTS.

**1. Opacity.** Pursuant to WAC 173-433-110, ~~((F))~~ it is a violation to operate a wood heater in a manner that emits a smoke plume exceeding the state opacity standard. ~~((The standard and test procedures are stated in app. D))~~. As specified in WAC 173-433-110 smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard constitutes prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall be enforceable on a complaint basis.

**2. Prohibitive Fuel Types.** It is prohibited to allow any of the following materials to be burned in a wood heater:

- Garbage;
- Treated wood;
- Plastic and plastic products;
- Rubber products;
- Dead animals, or parts of dead animals;
- Asphaltic products;
- Waste petroleum products;
- Paints and chemicals, or;
- Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, ~~((other than))~~ properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal-only heater. ~~((App. A) and paper used to start the fire, which normally emits dense smoke or obnoxious odors.))~~

**3. Burning During Burn Bans.** Wood heaters must not be used during a burn ban called pursuant to ~~((as describe in))~~ section 3.05 ~~((pg. 3-32))~~ unless such use complies with section 3.05. Smoke visible from a chimney, flue or exhaust duct after three hours has elapsed from the declaration of the episode or impaired air quality burn ban constitutes prima facie evidence of unlawful operation of an applicable solid fuel burning device. A person may refute this presumption with a demonstration that the smoke was not caused by a solid fuel burning device. ~~((Smoke visible from a chimney, flue or exhaust duct constitutes evidence of unlawful operation. This presumption may be refuted by demonstration that the smoke was not caused by a wood heater. The provisions~~

of this requirement are enforceable on a complaint or surveillance basis:))

**4. ((General Standards. Wood heaters may not be operated in violation of subsections 3.01C1d and 3.01C1e.))**

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

**3.05 BURN BANS.**

**A. PURPOSE.**

**1.** To prevent ~~((and avoid increasing unhealthful ambient))~~ air quality from worsening, or limit the time with poor air quality ((conditions)).

**2.** To define the legal conditions for outdoor and agricultural burning and the use of wood heaters during burn bans ~~((App. A)).~~

**B. APPLICABILITY.** Applies to all outdoor and agricultural burning, and wood heater use unless exempted elsewhere in this section.

**C. DECLARATION AND CRITERIA.**

**1. Impaired Air Quality Burn Bans.** ~~((This is))~~ May be declared and terminated by the APCO in accordance with RCW 70A.94.473 and WAC 173-433-140 ((App. B)), and it applies to:

**2.** Impaired air quality burn bans declared by the APCO apply to:

a. Yakima County, excluding all lands located within the external boundaries of the Yakama Indian Nation. ((The woodsmoke control zone as defined in app. H (pg. H-1) and shown on the map in app. I (pg. I-2); and/or))

b. Any other area defined by the board.

a. ~~((It indicates air contaminants above threshold levels (App. A) in table 3.05-1 in accordance with RCW 70.94.473 and WAC 173-433-140.))~~

**~~((Table 3.05-1 Ambient Air Threshold Levels for an Impaired Air Quality Event))~~**

((Pollutant	Threshold Level	
	First or Yellow Stage	Second or Red Stage
PM <sub>10</sub> <del>((App. B))</del>	<del>&gt;60 µg/m<sup>3</sup> (App. B) for a 24-hour average</del>	<del>&gt;105 µg/m<sup>3</sup> for a 24-hour average</del>

**Table 3.05-1 ((3.05-2)) Outdoor and Agricultural Burning and Wood Heater Use Permitted in Designated Areas During Burn Bans.**

Yes - Burning or use is permitted((;)); No - Burning or use is not permitted.

Type of Burning ((1))	Type of Burn Ban			
	Impaired Air Quality		Air Pollution Episode	
	First Stage ((a))	Second Stage ((b))	Forecast ((c))	Alert, Warning, or Emergency ((d))
1. Outdoor	No	No	No	No
2. Agricultural	No	No	No	No

((Pollutant	Threshold Level	
	First or Yellow Stage	Second or Red Stage
CO <del>((App. B))</del>	<del>&gt;8 ppm for an 8-hour average</del>	<del>No Level))</del>

**3. Air Pollution Episodes.** ~~((These))~~ Air pollution episodes are declared in accordance with ~~((RCW))~~ Chapter 70A.94 RCW. ~~((during meteorological conditions when there is a possible danger that normal operations at air contaminant sources will be detrimental to public health and safety.))~~

a. Stages. The four stages of an air pollution episode are forecast, alert, warning, and emergency as defined in RCW 70A.94.715 and ((WAC)) Chapter 173-435 WAC.

b. Declaration and Termination. The director of Ecology may declare and terminate the first three stages. Only the governor may declare and terminate the emergency stage of an episode.

**D. REQUIREMENTS.**

**1. Outdoor and Agricultural Burning.** Extinguish all burning as required in subsection 3.03C2 e and f. ((3.03C2)). ~~((pg. 3-8) and do not ignite any burns.))~~

**2. Fire Training Fires.** ~~((Do not ignite these fires.))~~ Prohibited during any declared impaired air quality burn ban.

**3. Wood Heaters.** Any person in a residence or commercial establishment which has an adequate source of heat other than a wood heater shall operate ~~burn~~ the wood heater according to table 3.05-1 ((3.05-2 (pg. 3-35))).

**E. EXEMPTIONS.**

**1. Outdoor and Agricultural Burning.** There are no exemptions during a burn ban.

**2. Wood Heater is the Only Heat Source.** Homes or commercial establishments with no source of adequate heat as defined in chapter 173-433 WAC, other than a wood heater, are exempt from the prohibition in this section. Adequate heat means a system that can maintain a temperature of 70°F ~~((App. B))~~ three feet off the floor in normally inhabited areas of a dwelling when the heater is operating as designed.

Type of Burning ((4/))	Type of Burn Ban			
	Impaired Air Quality		Air Pollution Episode	
	First Stage ((a))	Second Stage ((b))	Forecast ((e))	Alert, Warning, or Emergency ((d))
3. Fire Fighting/ Training Fires	No	No	No	No
4. <i>Wood Heaters</i>				
4.1 Pellet Stove	Yes	No	Yes	No
4.2 EPA Certified Woodstove	Yes	No	Yes	No
4.3 Oregon DEQ Phase 2 Woodstove	Yes	No	Yes	No
4.4 EPA Exempted Device	No	No	Yes	No
4.5 Sole Source of Heat	Yes	Yes	Yes	Yes
4.6 All Others	No	No	Yes	No

((Footnotes for table 3.05-2))

((4/ Definitions of types of burning are in app. A.))

**3.06 STRATOSPHERIC OZONE-DEPLETING CHEMICALS.**

**A. PURPOSE.** To prevent the unnecessary release of stratospheric ozone-depleting chemicals.

**B. APPLICABILITY.**

**1.** All persons who manufacture, handle, store, use, or dispose of stratospheric ozone depleting chemicals.

**2.** Those chemicals are listed in section 602 of Title VI of the FCAA.

**C. PROHIBITION.** The willful release of ozone-depleting chemicals is prohibited.

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

**3.07 ASBESTOS CONTROL.**

**A. PURPOSE.** ~~The purpose of this section is to ((F0)) prevent asbestos emissions, which could jeopardize public health or safety; due to ((from)) the disturbance of ((asbestos-containing materials (\*)))~~ Asbestos Containing Materials (ACM).

**B. APPLICABILITY.** ~~((This section applies to the use, maintenance, renovation, or demolition of any facility (\*) or vessel with ACM (\*) or suspect ACM (\*). It also applies to any activity which could disturb ACM.))~~ This section applies to any activity which could disturb ACM, to include use, maintenance, renovation, or demolition of any facility or vessel with ACM or suspect of ACM.

**C. COMPLIANCE.** In addition to the requirements of this section, all sources are required to comply with the provisions of WAC 173-400-075(1), 40 CFR Part 61, and 40 CFR Part 763. The additional requirements in 40 CFR Part 763 that pertains only to K-12 public and private schools are not included in this regulation, but the source must comply with them.

~~((D. DEFINITIONS. The following are the definitions for words and phrases used only in this section.))~~

~~((1. AHERA (App. B) Building Inspector. A person who has successfully completed the training requirements~~

~~established by EPA (App. B) for a building inspector and whose certification is current.))~~

~~((2. AHERA Project Designer. A person who has successfully completed the training requirements established by EPA for an abatement project designer and whose certification is current.))~~

~~((3. Asbestos. The asbestiform varieties of actinolite, amosite, tremolite, chrysotile, crocidolite, or anthophyllite.))~~

~~((4. Asbestos Containing Material (ACM). Any material containing more than one percent (1%) asbestos.))~~

~~((5. Asbestos Project. Any activity involving the abatement, renovation, demolition, removal, salvage, clean up or disposal of ACM or ACM waste or any other action that disturbs or is likely to disturb any ACM. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released; or the removal of sealants, coatings, and mastic bound in asphalt roofing with no felt layers containing ACM.))~~

~~((6. Asbestos Survey. A written report describing an inspection using the procedures in EPA regulations, or an alternate method that has received the prior written approval from the APCO (App. B), to determine whether materials or structures to be worked on, renovated, removed, or demolished contain asbestos (\*).))~~

~~((7. Competent Person. A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy; has the authority to take prompt corrective measures to eliminate the hazards; and has been trained and is currently certified in accordance with the standards established by L&I (App. B), OSHA (App. B), or EPA (App. B).))~~

~~((8. Component. Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from ACM.))~~

~~((9. Demolition. Wrecking, razing, leveling, dismantling, or burning of a structure, and making the structure permanently uninhabitable or unusable.))~~

~~((10. Facility. Any institutional, commercial, public, industrial, or residential structure, installation, or building.))~~



~~((11. Friable Asbestos Containing Material. ACM that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure.))~~

~~((12. Glove Bag. A sealed compartment with attached inner gloves used for the handling of ACM. Properly installed and used, glove bags provide a small work area enclosure typically used for small scale asbestos stripping operations.))~~

~~((13. Leak-Tight Container. A dust and liquid tight container at least 6 mil thick that encloses ACM waste and prevents solids or liquids from escaping. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic bags.))~~

~~((14. Nonfriable Asbestos Containing Material. ACM that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand.))~~

~~((15. Owner Occupied, Single Family Residence. Any non-multiple unit building containing living space that is currently occupied by one family who owns the property as their domicile. This includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room".))~~

~~((16. Renovation. Altering a structure or component (\*) any way, other than demolition.))~~

~~((17. Suspect Asbestos Containing Material. Material that has historically contained asbestos.))~~

#### ~~D. ((F)) MANAGEMENT OF ACM.~~

##### ~~1. Condition((s)).~~

~~a. ACM which is not likely to be disturbed by renovation ((\*)) does not have to be removed.~~

~~b. The ACM in these locations must be maintained in a stable and damage free condition to prevent asbestos emissions.~~

~~c. ACM in an unstable, friable condition needs to be removed, encapsulated, or enclosed.~~

~~d. ACM in structures planned for demolition must be removed prior to the start of the demolition work.~~

~~2. Practices. Acceptable practices are one or more of the following to insure stable ACM conditions:~~

~~a. Avoiding the ACM by restricting access and/or posting signage signing;~~

~~b. Enclosing the ACM with a wall or other barrier;~~

~~c. Treating the ACM with a bridging encapsulation compound; or~~

~~d. Conducting periodic inspections to insure the ACM is still in a stable condition.~~

#### ~~E. ((F)) ASBESTOS SURVEY REQUIREMENTS.~~

~~1. Survey Requirements. Before doing any renovation or demolition an asbestos survey ((\*)) must be performed by an AHERA building inspector ((\*)) except renovation of ((\*)) an owner-occupied, single-family residences. ((\*))~~

~~2. Records. The owner or operator of the facility must do the following:~~

~~a. Post a summary of the survey at the location on the work site where control of entry is maintained or communicate in writing to all persons who may come into contact with the ACM.~~

~~b. Retain a copy of all asbestos survey records for at least two years.~~

~~c. Record the condition and location of all known ACM remaining after completion of a renovation project.~~

#### ~~E. ((G)) NOTIFICATION.~~

~~1. General Requirements. Work must not be done on any project which could disturb ACM unless a complete notification has been submitted by the owner or operator to the ((authority)) agency on approved forms.~~

~~a. Duration of the project shall be commensurate with the amount of work.~~

~~b. All projects require notification except:~~

~~1) Asbestos projects other than demolition involving less than 10 liner feet (lf) ((App. B)) or 48 square feet (sf) ((App. B)) per structure of ACM in a calendar year.~~

~~2) Removal and disposal of caulking or window-glazing.~~

~~3) Renovation or demolition of detached sheds, garages, or out-buildings located at owner-occupied single-family dwellings.~~

~~c. Notification is required and the following apply:~~

~~1) The renovation or demolition of a facility ((\*)) or vessel containing ACM or suspect ACM ((\*)) more than the limits in subsection 3.07F1b 1). ((3.07G1b(1)(pg. 3-38))).~~

~~2) A copy of the notification, all amendments, the asbestos survey, and any order of approval ((App. A)) for an alternate means of compliance must be available at all times during work at the asbestos project site.~~

~~3) Notification or amendment must be filed at least ten business days prior to the planned start date.~~

~~4) A copy of all asbestos notification records must be retained for at least two years by the owner or operator of the facility.~~

~~d. Multiple Projects. Notification for multiple asbestos projects on contiguous properties may be filed on one form if:~~

~~1) Work is performed by the same contractor; and~~

~~2) A work plan is submitted that includes:~~

~~a) A map of the structures;~~

~~b) The site address for each structure;~~

~~c) The amount and type of ACM in each structure;~~

~~d) The schedule for performing the asbestos project work~~

~~e. Annual Notification. A property owner or owner's agent may file one annual notification for asbestos projects at one or more facilities on contiguous properties in one calendar year if:~~

~~1) The annual notification is filed at least ten business days prior to commencing work on any asbestos project; and~~

~~2) The total amount of ACM for all asbestos projects is less than 260 lf or 160 sf.~~

~~f. Duration. Notifications are valid for no more than twelve months from the original notification date.~~

##### ~~2. Amendments.~~

~~a. Mandatory. Must be submitted for any of the following and must be accompanied by the appropriate fee.~~

~~1) Increase in the project type or job size that increases the fee; or~~

~~2) Changes in the type of ACM that will be removed; or~~

~~3) Changes in the start date, completion date, or work schedule, including hours or days of work.~~

~~b. Optional. May be submitted for any other change in a notification.~~

1) Submitted by phone or fax and there is a minimal effort required to review it, an amendment fee will not be charged.

2) Submitted in writing on notification forms, an amendment fee will be charged.

c. Timing. Will not be accepted after the completion date on the current notification or latest amendment.

### **3. Emergencies.**

a. Advance notification is not required, if:

1) A sudden, unexpected event occurred that resulted in a public health or safety hazard; or

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

3) ACM was encountered that was not identified during the asbestos survey; or

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

b. A notification shall be filed not later than the first working day after the asbestos project is commenced and must be accompanied by a written ~~((demonstration))~~ statement from the property owner or operator illustrating ~~((demonstrating))~~ the need for the emergency project.

### **G. ~~((H))~~ ASBESTOS REMOVAL.**

**1. Renovation Projects.** Except as provided in subsection 3.07H3 ~~((3.07I3 (pg. 3-39)))~~, renovation work which does not remove ACM must:

a. Enclose or encapsulate the ACM in place; or

b. Leave the ACM in an unaltered and stable condition.

**2. Demolition Projects.** Except as provided in this subsection and subsection 3.07I3 ~~((3.07J3 (pg. 3-41)))~~, work that could disturb ACM must not be done without first removing all ACM.

**3. Exceptions.** ACM need not be removed prior to demolition, if the property owner demonstrates that it is not accessible because of unsafe conditions. Examples and requirements for this are:

a. Facilities or vessels that are structurally unsound and in danger of imminent collapse, or

b. Other conditions which ~~((that))~~ are immediately dangerous to life and health.

c. Documentation for Unsafe Conditions.

1) Submit written documentation of the hazard by a qualified government official or a licensed structural engineer, and

2) Submit procedures that will be followed for controlling emissions during demolition and disposal of the ACM.

### **H. ~~((I))~~ PROCEDURES FOR ASBESTOS PROJECTS.**

**1. Training Requirements.** Work must be performed by persons trained and certified in accordance with the standards established by L&I, OSHA, or EPA and whose certification is current. This requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner.

**2. Asbestos Removal Work Practices.** Persons ~~((App- A))~~ removing any ACM must:

a. Conduct work in a controlled area, marked by barriers and asbestos warning signs;

b. Restrict access to authorized personnel only;

c. Equip with transparent viewing ports when a negative pressure enclosure is used, if feasible;

d. Saturate absorbent materials with a liquid wetting agent prior to removal;

e. Wet unsaturated surfaces exposed during removal immediately;

f. Coat nonabsorbent materials continuously with a liquid wetting agent;

g. Wet and seal all ACM waste ~~((\*))~~ in leak-tight containers as soon as possible after removal but no later than the end of each work shift;

h. Clean any asbestos residue from the exterior of all leak-tight containers and ensure that each container is labeled with an asbestos warning sign specified by L&I, OSHA, or EPA;

i. Immediately after sealing each leak-tight container, permanently mark the container with:

1) Date the material was collected for disposal;

2) Name of the waste generator; and

3) Address where the ACM waste was generated.

This marking must be readable without opening the container;

j. Do not drop, throw, slide, or otherwise damage ACM waste containers; and

k. Store the ACM waste containers in a secure restricted ~~controlled~~ area if not immediately transported to an approved waste disposal site.

**3. Removal of Nonfriable ACM.** The following asbestos removal methods must be employed for ACM that has been determined to be nonfriable ~~((\*))~~ by a competent person ~~((\*))~~ or an AHERA building inspector:

a. The material must be removed using methods which do not render the material friable. Removal methods such as sawing or grinding must not be employed.

b. Dust control methods must be used as necessary to assure no fugitive dust is generated.

c. The material must be carefully lowered to the ground to prevent fugitive dust.

d. After being lowered to the ground, the material must be immediately transferred to a disposal container.

**4. Removal of Friable ACM.** Any combination of the following are acceptable work practices:

a. Negative Pressure Enclosure. ACM removal is done inside a negative pressure enclosure equipped with a local exhaust system that captures airborne asbestos fibers;

b. Glove Bag ~~((ging))~~. ACM removal of small quantities of ACM using a glove bag ~~((\*))~~ system.

c. Wrap and Cut Procedures. ACM need not be removed from a component ~~((\*))~~ if the component is wrapped and sealed prior to removal then removed and stored for reuse or disposal, or is transported without disturbing or damaging the ACM.

**L. ~~((M))~~ ALTERNATE MEANS OF COMPLIANCE.** An alternate asbestos removal method may be used after prior written approval from the APCO if the following actions are taken:

#### **1. Friable ACM Removal.**

a. An AHERA project designer has evaluated the work area, the type of ACM, proposed work practices and engineering controls, and demonstrates to the APCO that the

planned control method will be equally as effective as the work practices contained in subsection 3.07H (~~(3.07I (pg. 3-40))~~); and

b. The property owner or operator prepares a written air monitoring plan which includes Phase Contrast Microscopy (PCM) (~~((App. B))~~) air sampling. The sampling must demonstrate the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fiber per cubic centimeter (f/cc) (~~((App. B))~~) for an 8 hour time weighted average.

c. Dry removal may be approved if:

1) It is necessary to avoid danger to workers or damage to equipment from wetting agents contacting high temperature steam lines or electrical components which cannot be disconnected or de-energized during abatement, and

2) All wet removal methods have been evaluated by an AHERA project designer.

## 2. Nonfriable ACM.

a. A competent person or AHERA project designer has evaluated the work area, the type of ACM, the proposed work practices, and the engineering controls; and

b. The planned control method will be equally as effective as the work practices contained in subsection 3.07H (~~(3.07I (pg. 3-40))~~) in controlling asbestos emissions.

**3. Leaving Nonfriable ACM in Place.** Nonfriable ACM may be left in place during renovation or demolition upon prior written approval by the APCO if:

a. An AHERA project designer has evaluated the work area, the type of ACM, the proposed work practices, and the engineering controls; and

b. The ACM will remain nonfriable during all renovation or demolition activities and subsequent disposal of the debris.

c. This subsection does not apply to demolition by intentional burning.

## 4. Approval of Alternate Methods.

a. The APCO will issue an order of approval requiring conditions that are reasonably necessary to assure the planned control method is as effective as the work practices in subsection 3.07H (~~(3.07I (pg. 3-40))~~).

b. The APCO may revoke the order of approval for cause.

## J (~~(K)~~) DISPOSAL OF ACM WASTE.

**1. Prohibition.** It is unlawful for any person to dispose of ACM waste unless it is deposited within ten days of removal at an approved waste disposal site.

**2. Waste Tracking Requirements.** It is unlawful for any person to dispose of ACM waste unless all of the following requirements are met:

a. Maintain shipment records starting prior to shipping the waste;

b. Use a form that includes all of the following information:

1) The name, address, and telephone number of the waste generator;

2) The approximate quantity in cubic meters or cubic yards;

3) The name and telephone number of the disposal site operator;

4) The name and physical location of the disposal site;

5) The date transported;

6) The name, address, and telephone number of the transporter; and

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

c. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the ACM waste is delivered.

d. Return a signed copy of the waste shipment record to the waste generator within 30 days after receiving the waste at the disposal site.

e. Retain a copy of all waste shipment records for at least 2 years, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site.

**3. Temporary Storage Site.** A person may establish a facility to collect and store ACM waste if the facility is approved by the APCO and the following conditions are met:

a. Accumulated ACM waste is kept in a controlled storage area posted with asbestos warning signs and is accessible only to authorized persons;

b. Stored in leak-tight containers which are maintained in leak-tight condition;

c. Stored in a locked area except during transfer of ACM waste; and

d. Storage, transportation, disposal, and return of the waste shipment record to the waste generator must not exceed 90 days

**K** (~~(L)~~) FEES. See current fee schedule for the notification fees.

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

## 3.08 SPECIFIC DUST CONTROLS.

### A. CONSTRUCTION DUST.

**1. Purpose.** To prevent and reduce fugitive dust emissions from construction.

**2. Applicability.** Applies to any owner or operator engaged in the construction, repair, or demolition of any building; construction or maintenance of a road; site preparation; or landscaping work on a property.

### 3. Exemptions.

~~((a. From Requirements in subsection 3.08A4 (pg. 3-43). None.))~~

a. From Submitting a Dust Control Plan.

1) A single-family residence or duplex dwelling shall be exempt provided the site is not a phase of a project that involves more than one dwelling.

2) Projects causing complaints of dust emissions that result in a determination by the ~~((authority))~~ agency that reasonable precautions to prevent dust emissions are not being used shall not be exempt from the requirement for a dust control plan.

b. Emergencies. Sources are granted exemptions from subsection 3.08A (~~(3.08A)~~) during the following emergency situations provided the source contacts the ~~((authority))~~ agency within 24 hrs. of the start of the emergency and uses

reasonable precautions as soon as feasible after the emergency is resolved:

1) Active operations conducted during emergency, life threatening situations, or in conjunction with an officially declared disaster or state of emergency; or

2) Active operations conducted by public service utilities to provide electrical, natural gas, telephone, water, or sewer service during emergency outages.

#### 4. Requirements.

~~((a. Visible Emissions. Sources are required to comply with subsection 3.01C1a.))~~

~~((b. Preventing Particulate Matter From Becoming Airborne. Sources are required to comply with subsection 3.01C1b.))~~

~~((c. Construction, Demolition, or Repair Work. Sources are required to comply with subsection 3.01C1c.))~~

~~((d. Emissions Detrimental to Persons or Property. Sources are required to comply with subsection 3.01C1e.))~~

~~((e. Fugitive Dust. Sources are required to comply with subsection 3.01C2e.))~~

a. ~~((f.))~~ Water for Dust Control. Any person doing construction, repair, remodeling or demolishing of any building; or road construction or repair must have an adequate supply of water available to control dust at all times.

b. ~~((g.))~~ Site or Project Dust Control Plans. Where the potential exists for fugitive dust emissions, an owner or operator must prepare a site dust control plan and submit it to the ~~((authority))~~ agency 15 days prior to the start of any work that will disturb soil stability, cover, or cause fugitive dust emissions.

1) Dust control plans must identify management practices and operational procedures which will effectively control fugitive dust emissions.

2) Dust control plans must contain the following information:

a) A detailed map or drawing of the site;

b) A description of the water source to be made available to the site, if any;

c) A description of preventive dust control measures to be implemented, specific to each area or process;

d) A description of contingency measures to be implemented in the event any of the preventive dust control measures become ineffective;

e) A statement, signed by the owner or operator of the site, accepting responsibility for the implementation and maintenance of the dust control plan;

f) The name and telephone number of person(s) available 24 hours a day to mitigate any episodes of dust emissions; and

g) If the ownership or control of all or part of the site changes, the plan must be resubmitted by the new party and approved by the ~~((authority))~~ agency.

3) The ~~((authority))~~ agency will review the plan and either approve or require modification of the plan.

4) An owner or operator must implement effective dust control measures outlined in approved plans.

c. ~~((h.))~~ Master Dust Control Plan. As an alternative to a site dust control plan, an owner or operator may submit a master dust control plan that applies to more than one site or project. The master plan must:

1) Address all the requirements in subsection 3.08A4b ~~((3.08A4g (pg. 3-43)))~~; and

2) Provide for effective control of fugitive dust emissions to all sites and projects.

3) Prior to the commencement of work at any site or project covered by the master plan, additional notification must be submitted as soon as possible. The master plan or the additional notification must:

a) Give the name and phone number of a person responsible for the implementation of dust control measures for each of the sites; and

b) Address any unique site qualities or project operations that would impair the effectiveness of dust control measures.

**5. Additional Information.** Additional information is available from the ~~((authority))~~ agency

**6. Fees.** See current fee schedule.

#### B. DUST FROM CATTLE FEEDING OPERATIONS.

**1. Purpose.** To prevent and reduce fugitive dust emissions from cattle feeding operations.

**2. Applicability.** Applies to any owner or operator of a beef or dairy replacement cattle feeding operation:

**3. Emergencies** ~~((Exemptions.))~~ Sources are granted exemptions from subsection 3.08B ~~((3.08B (pg. 3-44)))~~ during an emergency situation provided:

a. The owner or operator of the source contacts the ~~((authority))~~ agency before the end of the next business day after the start of the emergency; and

b. The source uses reasonable precautions as soon as feasible after the emergency is resolved.

c. An emergency situation exists when compliance with subsection 3.08B ~~((pg. 3-44) would))~~ causes risk to human health or substantial crop damage or cattle losses.

#### 4. Requirements.

~~((a. Visible Emissions. Sources are required to comply with subsection 3.01C1a.))~~

~~((b. Preventing Particulate Matter From Becoming Airborne. Sources are required to comply with subsection 3.01C1b.))~~

~~((c. Odor. Sources are required to comply with subsection 3.01C1d.))~~

~~((d. Emissions Detrimental to Persons or Property. Sources are required to comply subsection 3.01C1e.))~~

~~((e. Fugitive Dust. Sources are required to comply with subsection 3.01C2e.))~~

a. ~~((f.))~~ Dust Control Plan Preparation. The following types of sources must prepare and submit an annual dust control plan to the ~~((authority))~~ agency no later than April 15th of each year.

1) Any source with an average of 1,000 or more cattle confined and fed during the months of April through October and; or

2) Any cattle feeding operation which receives a verified fugitive dust complaint.

b. ~~((g.))~~ Dust Control Plan Content. Dust control plans must include:

1) A map or drawing of the feedlot;

2) The operational capacity of the feedlot;

3) The maximum number of cattle which are confined;

4) The water available to the feedlot for dust control;

5) The site-specific features which could complicate or prevent implementation of BMPs ~~((App. B))~~

6) Which BMPs will be used, and where they will be used;

7) The equipment and materials to be used to implement a BMPs;

8) An operational and maintenance plan and schedule to implement each BMPs; and

9) An operation and maintenance plan which also includes BMPs for;

- a) Hay chopping,
- b) Grain processing,
- c) Feed mixing, and
- d) Feed handling.

c. ~~((h))~~ Plan Implementation.

1) The ~~((authority))~~ agency will approve or require modification of the plan within 30 days of receipt.

2) A feedlot operator must implement an approved dust control plan.

3) A feedlot operator may change practices from those in an approved dust control plan as long as the effectiveness of the plan is not reduced, and the operator notifies the ~~((authority))~~ agency of the change.

**5. Additional Information.** Additional information is available from the ~~((authority))~~ agency.

**6. Fees.** See current fee schedule

~~((3.07 MOBILE SOURCE EMISSIONS. Reserved for later use.))~~

~~((3.08 GENERAL RULE FOR MINOR SOURCES. Reserved for later use.))~~

~~((3.09 MONITORING, RECORDKEEPING, AND REPORTING. Repealed by Amendment 1.))~~

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

**AMENDATORY SECTIONS**

**ARTICLE 4 - PERMITS & REGISTRATION**

~~REQUIREMENTS COMMON TO ALL PERMITS. Reserved for later use.~~

**4.01~~(0)~~ REGISTRATION PROGRAM**

**A. PURPOSE.** ~~((WAC 173-400-009))~~ To develop and maintain a current and accurate record of air contaminant sources.

**B. APPLICABILITY.** Applies to the owner or operator of each source within the categories ~~((each source))~~ listed in WAC 173-400-100. ~~((within the categories in app. G. (pg. G-1).))~~

**C. RESPONSIBILITY.** The owner or operator of the source is responsible to notify the ~~((authority))~~ agency of the existence of the source except when exempted in subsection 4.01D ~~((pg. 4-1)).~~

**D. EXEMPTIONS.** All exemptions are based on following: ~~((emissions use, the actual emissions from the source.))~~

**1. Air Operating Permit Sources.** Sources or emission units which are permitted according to section 4.02 ~~((4 (pg. 4-5))).~~

~~((2. Criteria Exempt Sources. Sources which have actual emissions less than the rates shown in table 4.01-1 (pg. 4-1).))~~

~~((3. Toxic Air Pollutant Sources (TAP). The de minimis emission rate specified for each TAP in WAC 173-460-150. Sources which do not emit a quantifiable amount of toxic air pollutants listed in app. K, para. B.))~~

~~((4.))~~ **2. Gasoline Marketing Operations.**

a. Any loading terminal or bulk plant dispensing ≤7,200,000 gallons per year;

b. Any gasoline dispensing facility dispensing ≤ 360,000 gallons per year which started operation prior to August 31, 1991; or

c. Any gasoline dispensing facility with a total storage capacity of 10,000 gallons.

~~((Table 4.01-1 Criteria for Defining Exempt Sources))~~

<del>((Pollutant</del>	<del>TPY (App. B))</del>
<del>((CO (App. B))</del>	<del>((5.0))</del>
<del>((NO<sub>2</sub> (App. B))</del>	<del>((2.0))</del>
<del>((SO<sub>2</sub> (App. B))</del>	<del>((2.0))</del>
<del>((PM (App. A))</del>	<del>((1.25))</del>
<del>((PM<sub>10</sub> (App. A))</del>	<del>((0.75))</del>
<del>((VOC (App. B))</del>	<del>((2.0))</del>
<del>((Pb (App. B))</del>	<del>((0.005))</del>

**E. LIMITED EXEMPTIONS.** ~~((RCW 70.94.151(3)))~~

**1.** A grain warehouse or elevator emission source with an annual volume less than or equal to ~~((≤))~~ 10 ~~((,000,000))~~ million bushels is granted an exemption from registering, reporting, or paying a registration fee after:

a. Filing ~~((an initial))~~ registration according to subsection 4.01F1 ~~((pg. 4-2));~~

b. Filing ~~((an initial))~~ report according to subsection 4.01F2 ~~((pg. 4-2);~~ and

c. Paying the ~~((initial))~~ registration fee according to subsection 4.01G ~~((pg. 4-5)).~~

**2.** The exemption remains until the source increases the licensed capacity.

**3.** If the licensed capacity is increased to greater than ~~((>))~~ 10 million bushels, the source must register, report, and pay the registration fee again prior to the start of the first harvest season after the date of change in the licensed capacity.

**4.** The source is not exempted from the requirements of 4.01F5&6 and WAC 173-400-040 (2), (3), (4) and (5) ~~((pg. 4-5)).~~

**F. REGISTRATION AND REPORTING PROCEDURE.** ~~((WAC 173-400-101, 102, & 103))~~

**1. Registration.**

~~a. ((Sources required to register are defined in subsections 4.01B, D, & E (pg. 4-1 & 4-2).))~~

a. ~~((The r))~~ Registrants shall use forms and directions supplied by the ~~((authority))~~ agency.

b. ~~((The f))~~ Forms must be completed and returned within the time specified.

c. Emission units within the facility must be listed separately unless they meet the following conditions:

1) The ~~((authority))~~ agency determines that certain emission units may be combined into process streams for purposes of registration and reporting; or

2) There are identical units of equipment or control facilities installed, altered, or operated in an identical manner on the same process; the number of the units may be reported.

~~(2. Reporting. Reports must be filed during January using forms and directions supplied by the agency authority.)~~

~~((a. Detailed Annual Reporting.))~~

~~((1) The source emits one or more pollutants at rates greater than those listed in table 4.01-2 (pg. 4-4);)~~

~~((2) Reporting is necessary to comply with federal requirements and emission standards;)~~

~~((3) Reporting is required in a RACT (App. B) determination for the source category;)~~

~~((4) The APCO determines that the source poses a threat to human health and the environment; or))~~

~~((5) Sources who qualified for three year reporting, but failed to comply with the regulations or orders issued by the agency authority.))~~

~~((b. Three Year Reporting.))~~

~~1) ((The source emits one or more pollutants at rates greater than the rates in table 4.01-1 (pg. 4-2) but less than the rates in table 4.01-2 (pg. 4-4); or))~~

~~2) ((The source emits a quantifiable amount of one or more class A or B toxic air pollutants listed in app. K, para. B.))~~

**2. Scope of registration and reporting requirements.**

**a) Administrative options.** A source in a listed source category that is located in Yakima County will be addressed in one of several ways:

1) The source will be required to register and report once each year. The criteria for identifying these sources are listed in subsection (b) of this section.

2) The source will be required to register and report once every three years. The criteria for identifying these sources are listed in subsection (c) of this section.

~~((3) The source will be exempted from registration program requirements. The criteria for identifying these sources are listed in subsection (4) of this section.))~~

**b) Sources requiring annual registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once each year:

1) The source emits one or more air pollutants at rates greater than the "emission threshold" rates defined in WAC 173-400-030;

2) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

3) Annual registration and reporting is required in a reasonably available control technology (RACT) determination for the source category; or

4) The APCO determines that the source poses a potential threat to human health and the environment.

**c) Sources requiring periodic registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once every three years:

1) The source is subject to WAC 173-400-100, and emits air pollutants at rates less than the "emission threshold" rates defined in WAC 173-400-030 and Table 4.01-1; or

2) A source that is subject to WAC 173-400-100, but not subject to new source review under WAC 173-400-110(5) must register with the YRCAA.

~~((d) Sources exempt from registration program requirements. Any source included in a listed source category is not required to register if:))~~

~~((1) The source emits pollutants below emission rates specified in Table 4.01-1 of this section; and))~~

~~((2) The source or emission unit does not emit more than de minimis amounts of toxic air pollutants specified in WAC 173-460-150.))~~

**Table 4.01-1 ((2)) Significant Pollutant Emission Levels**

Pollutant	TPY
CO <del>((App. B))</del>	100
NOx <del>((App. B))</del>	40
SOx <del>((App. B))</del>	40
PM <del>((App. A))</del>	25
PM <sub>10</sub> <del>((App. A))</del>	15
PM <sub>2.5</sub>	10
VOC <del>((App. B))</del>	40
Pb <del>((App. B))</del>	0.6
Fluorides	3
Sulfuric Acid Mist (H <sub>2</sub> SO <sub>4</sub> ) <del>((App. B))</del>	7
Hydrogen Sulfide (H <sub>2</sub> S) <del>((App. B))</del>	10
Total Reduced Sulfur (TRS) <del>((App. B))</del> including H <sub>2</sub> S	10
Reduced Sulfur Compounds including H <sub>2</sub> S	10
Municipal waste combustor organics measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.	0.0000035
Municipal waste combustor metals measured as PM.	15
Municipal waste combustor acid gases measured as SO <sub>2</sub> and HCl <del>(App. B)</del>	40

d. Registration Report Contents.

1) Detailed annual registration reports shall contain:

- a) Annual emissions inventory;
- b) Operation and maintenance plans;
- c) Plan showing the plant layout; and
- d) Changes in operations since the last detailed report.

2) Three-year registration reports shall also contain the annual emissions inventories.

3) The APCO ~~((App. B))~~ will schedule the detailed annual and three-year report cycles.

**3. Operational and Maintenance Plan.** Owners or operators of registered air contaminant sources must develop

and maintain an operation and maintenance plan for process and control apparatus (~~((App. A))~~). The plan must:

- a) Reflect good industrial practice;
- b) Include a record of performance and periodic inspections of process and control apparatus;
- c) Be reviewed and updated by the source owner or operator at least annually; and
- d) Be made available to the ~~((authority))~~ agency upon request.

**4. Signature.** The owner, operator, or a designated representative must sign the registration or reporting form(s) for each source. The owner, operator or designated representative (~~((lessee))~~) of any the source is responsible for the accuracy, completeness, and timely submittal of ~~((this))~~ all information.

**5. Closure Report.** A closure report shall ~~((must))~~ be filed with the ~~((authority))~~ agency within 90 days ~~((when the operation))~~ of a source is permanently ceasing~~((ed))~~ operations.

**6. Change of Ownership.** A new owner or operator shall ~~((must))~~ report to the ~~((authority))~~ agency any change of ownership or operator within ~~((90))~~ 30 days of said change.

**G. FEES.** All registrants must pay a fee in accordance with the current fee schedule.

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

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

~~((4.02 NEW SOURCE REVIEW. (RCW 70.94.152, & WAC 173-400-1106116) Repealed by Amendment 1.))~~

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

~~((4.03 NEW SOURCE REVIEW FOR TOXIC AIR POLLUTANTS. Reserved for later use.))~~

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

~~((4.04))~~ **4.02 AIR OPERATING PERMITS (AOP) ISSUED PURSUANT TO TITLE V OF THE FCAA.** ~~((Chap. 173-401 WAC))~~

~~((A. PURPOSE. (WAC 173-401-100) To reference the appropriate WAC citations and to define any additional requirements or changes to implement a local AOP (App. B) program in accordance with chap. 173-401 WAC.))~~

**A. APPLICABILITY.** As defined in WAC 173-401-300.

**B. REQUIREMENTS.** When multiple federal, state, or local laws or regulations contain requirements for an AOP source, all laws and regulations apply.

**C. DEFINITIONS.** ~~((As defined in WAC 173-401-200 otherwise as defined in WAC 173-400. When a term is not defined in WAC 173-401-200 see app. A for the definition.))~~ The definitions of terms contained in chapters 173-400 & 173-401 WAC are incorporated by reference. Any term not defined in chapters 173-400 & 173-401 WAC may be found in Appendix A.

**D. PERMIT APPLICATIONS.** ~~((As defined in))~~ All sources subject to Title V of the FCAA shall submit an initial permit application or a renewal application using the forms provided by YRCAA. These forms are designed to capture the minimum essential data contained in chapter 173-401 WAC. ~~((As defined in chap. WAC 173-401 WAC, Part V.))~~

**E. PERMIT CONTENT.** All Title V Permits issued by YRCAA shall contain terms and conditions that assure compliance with all applicable requirements at the time of permit issuance. All Title V Permits issued by YRCAA will be based on the most stringent of the requirements listed in chapter 173-401 WAC, Part VI. ~~((As defined in chap. WAC 173-401 WAC, Part V.))~~ ~~((As defined in))~~

~~((1. Emissions Standards. As required in sections 3.01 and 3.02 (pg. 3-3) and app. D.))~~

~~((2. Monitoring, Recordkeeping, and Reporting. As required in section 3.11.))~~

~~((3. Terms and Conditions. As required in applicable local rules and this regulation.))~~

~~((4. Operation and Maintenance. As required in subsection 3.00E (pg. 3-3.))~~

~~((5. Outdoor and Agricultural Burning. As required in section 3.03 (pg. 3-7.))~~

~~((6. Compliance and Enforcement. As required in subsection 1.07A, article 5 (pg. 5-1), and section 2.05 (pg. 2-4.))~~

~~((7. Appeals. As required in section 2.05 (pg. 2-4.))~~

~~((8. Orders. Any relevant order issued by the authority, ecology, or EPA.))~~

**F. Appeals.** Any permit, or the terms or conditions of such a permit, issued by the agency may be appealed to the pollution control hearings board under chapter 43.21B RCW and RCW 70A.94.161(9)

**G. PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS.** All permits issued, renewed, reopened or revised will be accomplished in accordance with chapter ~~((As defined in chap.))~~ 173-401 WAC, Part VII.

**H. GENERAL PERMITS.** All general permits will be issued in accordance with chapter 173-401 WAC, Part VIII.

**I. PUBLIC INVOLVEMENT.** Public participation for the YRCAA Permit Program will be in accordance with chapter 173-401 WAC, Part IX and section 2.04 of this regulation.

**J. FEES.**

**1.** As defined by chapter 173-401 WAC, Part X; and

**2.** Section 2.02 of this regulation ~~((pg. 2-2))~~ and current fee schedule.

~~((4.05))~~ **4.03 VOLUNTARY LIMITS ON EMISSIONS.** ~~((WAC 173-400-091))~~

**A.** Upon request by the owner or operator of a new or existing source or stationary source, the agency shall issue a regulatory order that limits the potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the agency.

**B.** A condition contained in an order issued under this section shall be less than the source's or stationary source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70A.94 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

C. Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or stationary source complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

D. Any order issued under this section must comply with WAC 173-400-171.

E. The terms and conditions of a regulatory order issued under this section are enforceable. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

~~((A. To establish a rule for any source who desires to voluntarily limit the potential to emit specified prescribed pollutants.))~~

~~((B. **APPLICABILITY.** Any source which volunteers to reduce the potential to emit to levels established by a regulatory order.~~

~~**1. Synthetic Minor (SM) Status.** This is available as an alternative to an AOP (*App. B*) if the source limits the potential to emit below the following levels:~~

~~a. 100 TPY (*App. B*) of criteria pollutants (*App. A*) from all point sources at the facility; or~~

~~b. 10 TPY of one HAP (*App. A*) listed in app. L from all point and/or fugitive sources; or~~

~~e. 25 TPY of two or more HAPs from all point and/or fugitive sources.~~

~~**2. All Other Sources.** The source does not reduce the potential to emit below the levels in subsection 4.05B1 (pg. 4-6.))~~

~~((C. **CONDITIONS OF THE REGULATORY ORDER.**~~

~~**3.** Limits the potential to emit any air pollutant to below voluntary and agreed levels.~~

~~**4.** The new limit for the potential to emit shall be < the annual emissions in subsection 4.05B1 (pg. 4-6) or any standard under WCAA (*App. B*), FCAA (*App. B*), or the SIP (*App. B*).~~

~~**5.** Shall require sufficient monitoring, record keeping, and reporting as defined in section 3.11 to assure continuous compliance with applicable requirements, including emissions limitations set by a regulatory order (*App. A*).~~

~~**6.** Shall be federally enforceable.~~

~~**7.** Shall require a revision or revocation of the order for any proposed deviation.))~~

~~((D. **ADMINISTRATIVE PROCEDURES.**~~

~~**8.** Public participation in the permitting is defined in section 2.04.~~

~~**9.** The conditions of the order or decision to grant or deny SM status may be appealed as defined in section 2.05 (pg. 2-4.))~~

~~F. FEES. ((See)) As per current fee schedule.~~

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

~~((4.06 **EMISSION REDUCTION CREDITS AND BANKING.** Reserved for later use.))~~

~~((4.07) **4.04 ADMINISTRATIVE PERMITS**~~

~~A. **PURPOSE.** To provide control of emissions from sources, groups of sources, or activities which are not subject(ed) to any ((some)) other form of ((control)) regulation.~~

~~B. **APPLICABILITY.** Any lawful activity or source subject to the WCAA ((*App. B*)) within the jurisdiction of the ((authority)) agency. This section does not apply to any source or activity subject to any of the following: ((actions required in other sections))~~

~~1. Orders of approval issued pursuant to Chapter 70A.94 RCW, the WCAA;~~

~~2. Individual permits; or~~

~~3. General rule permits.~~

~~C. **PERMIT DURATION.**~~

~~1. ((The)) Administrative permits shall expires one year after issuance; or~~

~~2. When the board adopts a rule or issues an order to replace the permit.~~

~~D. **REQUIREMENTS.**~~

~~1. The permit requirements shall be as effective in controlling emissions as any other similar permit issued by the ((authority)) agency.~~

~~2. The APCO may use any lawful permit condition to control a source or activity permitted by this section.~~

~~3. Failure to comply with ((the)) all approval conditions shall ((requirements of this section)) voids the permit.~~

~~E. **AMENDMENT OF THE PERMIT.** If additional requirements are needed to prevent air pollution and/or protect property, health, safety and welfare((-and comfort)) of persons from the effects of the permitted activity; the ((authority)) agency shall amend the permit. When an amendment is made, the ((authority)) agency ((must)) shall notify the responsible person of the limitations.; All new ~~and any~~ requirements contained within the amendment shall ((imposed will)) become a conditions of the permit.~~

~~F. FEES. As set by the current fee schedule.~~

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

## AMENDATORY SECTIONS

### ARTICLE 5 - COMPLIANCE AND ENFORCEMENT

#### 5.01((0)) GENERAL INFORMATION.

~~A. **PURPOSE.** To establish the general compliance and enforcement procedures.~~

~~B. **APPLICABILITY.** Applies to all sources regulated by the ((authority)) agency for any violation of this regulation, ((any applicable law, or)) any permit, order ((or condition)) of approval issued by the ((authority)) agency, or any applicable law.~~

~~C. **INVESTIGATION.** The ((authority)) agency will conduct investigations for the purpose of determining compliance with this regulation, any of the laws or regulations enforced by the ((authority)) agency, any permit issued by the ((authority)) agency, any order issued by the ((authority)) agency, or any condition of approval issued by the ((authority)) agency.~~

~~D. ((WRITTEN)) **NOTICES Of Violations (NOV)**~~

~~1. ((The authority agency will serve a written notice to any person that has caused or allowed an alleged violation of this regulation, any applicable law, or any permit, order or~~



condition of approval issued by the authority agency.) At least thirty days prior to the commencement of any formal enforcement action, the agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the rule alleged to be violated, the facts alleged to constitute a violation, and offer the alleged violator an opportunity to meet with the agency prior to the commencement of formal enforcement action. The notice may include one of the following:

- a. an order that necessary corrective action be taken within a reasonable time;
- b. the agency may require that the alleged violator or violators appear before it for the purpose of providing the agency information pertaining to the alleged violation.

~~((2. See subsection 3.01C3a3) for a NOV (App. B) for agricultural odors.))~~

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

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

#### 5.02((4)) ADDITIONAL OR ALTERNATIVE ENFORCEMENT ACTIONS

**A. PURPOSE.** To describe other provisions to use with or in addition to civil or criminal penalties to avoid a violation or gain compliance.

**B. APPLICABILITY.** Applies to all sources regulated by the ~~((authority))~~ agency for any violation of this regulation, ~~((any applicable law, or))~~ any permit, order ~~((or condition))~~ of approval issued by the ~~((authority))~~ agency, or any applicable law.

**C. CORRECTIVE ACTION ORDER.** The ~~((authority))~~ agency may issue a corrective action order that describes the actions necessary to correct or avoid a violation. The order may be included as part of a NOV ~~((written notice))~~ or issued as a separate document.

**D. PROHIBITORY ORDER.** The ~~((authority))~~ agency may issue a prohibitory order for the purpose of protecting human health or safety. The order will prohibit specific actions from being taken at a specific location.

**E. INJUNCTIVE RELIEF.** Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this regulation or order issued thereunder, the APCO ~~((App. B))~~ after providing notice to such person and an opportunity to comply, may petition the superior court of Yakima ~~((the county wherein the violation is alleged to be occurring or to have occurred))~~ for a restraining order, or a temporary or permanent injunction or other appropriate order.

**F. ASSURANCE OF DISCONTINUANCE.** As an additional means of enforcing ~~((these))~~ this regulation~~((s))~~, the APCO may accept an assurance of discontinuance of any act or practice deemed in violation of this regulation. The assurance must specify a time limit during which the discontinuance is to be accomplished.

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

#### 5.03 ((2)) PENALTIES

**A. PURPOSE.** ~~((To d))~~ Describes the provisions for assessing penalties for violations.

**B. APPLICABILITY.** This section applies to any person found to be in violation of this regulation, any applicable law, ~~((or any))~~ permit, order or condition of approval issued by the ~~((authority))~~ agency.

**C. CRIMINAL PENALTIES.** Shall be imposed in accordance with ~~to~~ Chapter 70A.94 RCW.

#### D. CIVIL PENALTIES.

**1. General Civil Penalty.** In addition to or as an alternate to any other penalty provided by law, any person who violates the provisions of Chapter 70A.94 RCW ~~((, chap. 70.120 RCW,))~~ or any other air pollution rules or regulations, the ~~((authority))~~ agency may impose ~~((enforce under the RCW (App. B)))~~ a civil penalty in an amount not to exceed \$12,000 per day for each violation. ~~((Each violation shall be a separate event, and, in the case of a continuing violation, each day shall be a separate violation.))~~ Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

**2. Penalty for Failure to Comply with an Order.** Any person who fails to take action as specified by an order issued under this article shall be liable for a civil penalty of not more than \$12,000 per day for each day of continued noncompliance.

**E. INTEREST ON PENALTIES.** Penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed interest shall not begin to accrue until the 31st day following the final resolution of the appeal.

**F. AIDING OR ABETTING.** Each act of commission or omission which procures, aids or abets in the a violation shall be considered a separate violation and subject to penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21(B).300 ~~((43.12(B).300))~~.

**G. UNDER-REPORTING.** In addition to the other penalties provided above, any person knowingly under-reporting emissions or other information used to set fees or persons required to pay emissions or permit fees who are more than 90 days late with payments may be subject to a penalty equal to three times the amount of the original fee owed.

**H. DISBURSEMENT.** All penalties recovered under this section by the ~~((authority))~~ agency shall be paid into the treasury of the ~~((authority))~~ agency and rendered into its funds.

**I. WITHHOLDING GRANTS.** Public or private entities that are recipients or potential recipients of grants from the ~~((authority))~~ agency, whether for air quality related activities or not, may have the grants rescinded or withheld by the ~~((authority))~~ agency for failure to comply with provisions of this regulation.

#### J. PENALTY DETERMINATION.

**1. Evaluation Criteria.** The following criteria shall be used to evaluate a violation prior to assessing a penalty:

- a. Gravity of the violation;
- b. Economic benefit gained by the violator;
- c. ~~((authority))~~ Agency expenses for investigating, notifying, and processing the documents for the violation; and
- d. When requested, the costs incurred by a fire department ~~((App. A))~~ to respond or suppress an illegal outdoor or agricultural fire.

~~2. ((Documentation. The APCO shall prepare and the board approve a policy and worksheets to implement the penalty determinations.))~~

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

#### APPENDIX A

#### Definitions of Words and Phrases

This appendix contains a list of definitions for words and phrases not contained within the incorporated air pollution rules listed in Article 2, section 2.03. ~~((used in more than one section of the regulation. Defined words or phrases are identified with "(App. A)" in the text. The source of the definition is identified in italics. The d))~~ Definitions for terms not found in this appendix or within the Articles of this regulation ~~((are in))~~ shall have the same meaning as in ~~((chap.))~~ chapter 173-400 WAC.

~~((Adequate Source of Heat (WAC 173-433-030(1))—The ability to maintain 70° F (App. B) at a point three feet above the floor in all normally inhabited areas of the dwelling.))~~

~~((Agricultural Burning (WAC 173-430-030(1))—The burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.))~~

~~((Agricultural Operation (WAC 173-430-030(2))—A farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS (App. B) schedule F form or proof that the land is designated in a classification for agricultural use. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.))~~

~~((Ag Task Force (WAC 173-430-030(3))—The state agricultural burning practices and research task force.))~~

~~((Air Pollution Episode—A period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chap. 173-435 WAC.))~~

~~((Authority))~~ Agency - The Yakima Regional Clean Air ~~((Authority))~~ Agency.

~~((Best Management Practice (BMP) (WAC 173-430-030(4))—The criteria established by the state ag task force.))~~

**Board** - The Board of Directors of the Yakima Regional Clean Air ~~((Authority))~~ Agency

**Burn Bans** - Periods when Ecology or the ~~((authority))~~ agency determine air contaminant levels are approaching or have reached a level which is harmful to public health or safety. Outdoor burning, agricultural burning, and burning with wood or coal heaters are severely curtailed during these periods.

~~((Ceremonial Fires—Fires necessary for Native American ceremonies (i.e. conducted by and for Native Americans) if part of a religious ritual.))~~

**Construction/Demolition Debris** - All material resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

**Control Apparatus** - Any device which prevents or controls the emission of any air contaminant

~~((authority))~~ agency for the purpose of causing a person to be in compliance with cited ~~((authority,))~~ federal, state or local federal laws and regulations. The order will specify actions to be taken within a specific time.

**Daylight Hours** - 30 minutes before and 30 minutes after the published sunrise and sunset times. ~~((in a newspaper of general circulation in the area.))~~

~~((De Minimis—The minimum threshold levels that exempts sources or source categories from complying with specific requirements.))~~

~~((DEQ Phase 2 Woodstove (WAC 173-433-150 (1)(e))—A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21—Woodstove Certification" dated November 1984.))~~

~~((Eight Hours (WAC 173-435-020(5))—Any consecutive eight hours starting at any clock hour.))~~

~~((EPA Certified Woodstove (WAC 173-433-030(2))—A woodstove that meets the emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified by the EPA (App. B) under 40 CFR Part 60, Subpart AAA (App. B)—Standards of Performance for Residential Wood Heaters as amended through July 1, 1990.))~~

**EPA Exempted Device** - A device that is not required to be tested under 40 CFR Part 60, Subpart AAA.

**Equipment** - Any stationary or portable device or any part thereof capable of causing the emission of any air contaminant into the ambient air.

~~((Farmer (WAC 173-430-030(7))—Any person engaged in the business of growing or producing for sale upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons using such products as ingredients in a manufacturing process, or persons growing or producing such products primarily for their own consumption.))~~

**Fire Department** - Fire control agency such as city fire departments, local fire districts or the DNR ~~((App. B))~~.

~~((Fire Fighting Training Fires—Fires for the instruction in methods of firefighting, including but not limited to training to fight structural fires, aircraft crash rescue fires, and forest fires.))~~

~~((Fireplace (RCW 70.94.453(3))—Any permanently installed masonry fireplace, or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air-to-fuel ratio.))~~

**Firewood** - Bare untreated wood used as fuel in a wood heater, solid fuel burning device, Indian ceremonial fire, or a recreational fire.

~~((PM<sub>10</sub> First Stage of Impaired Air Quality~~ - Can be declared by the authority when PM<sub>10</sub> is at an ambient level of 60 µg/m<sup>3</sup> (*App. B*) of air measured on a 24-hour average, or when CO (*App. B*) is at an ambient level of eight ppm of contaminant of air by volume measured on an eight-hour average.))

~~((40 CFR 60.531~~)) - A solid fuel burning appliance that is designed to be located outside of ordinary living areas and that warms spaces other than the space where the appliance is located, by the distribution of air heated in the appliance through ducts. The appliance must be tested and listed as a furnace under accepted American or Canadian safety testing codes unless exempted from this provision by the EPA. A manufacturer may request an exemption in writing from the EPA by stating why the testing and listing requirement is not practicable and demonstrating that his appliance is otherwise a furnace.

**Garbage** - Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking or serving of food.

~~((Hazardous Air Pollutant~~ - Any air pollutant listed in accordance with section 112(b), FCAA (*App. B*).))

**Home Barbecues** - A small wood, charcoal, LP (~~(*App. B*)~~) gas, or natural gas fire for the purpose of cooking.

~~((Hour~~ (*WAC 173 435 020(4)*) - A 60-minute period, beginning and ending on a clock hour.))

~~((Impaired Air Quality~~ - A first or second stage impaired air quality condition declared by ecology or the authority in accordance with *WAC 173 433 140*.))

~~((Land Clearing Burning~~ - Outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e. projects that clear the land surface so it can be developed, used for a different purpose, or left unused.))

**Maximum Available Control Technology (MACT)** - A standard developed for the control of hazardous air pollutant emissions from specific source categories regulated under 40 CFR Part 63. The full definitions for MACT for existing sources, MACT for new sources and MACT floor are in 40 CFR 63.51.

**Minor Source** - Any stationary source which is not a major stationary source (~~(*App. A*)~~).

**Natural Vegetation** - Unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

**New Wood Stove** (*RCW 70.94.453(4)*) - A wood stove or wood heater that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and has not been so used to have become what is commonly known as "second hand" within the ordinary meaning of that term.

**Nuisance** - An emission of smoke or any other air pollutant that unreasonably interferes with the use or enjoyment of the property upon which it is deposited.

**Order** - An order issued by Ecology or the (~~(*authority*)~~) agency under chapter 70A.94 RCW (~~(*App. B*)~~), including,

but not limited to sections (~~(RCW)~~) 70A.94.141(3) (~~(332, RCW)~~) 70A.94.1512, RCW 70A.94.1523, 70A.94.153 and RCW 70A.94.332+41(3), and includes, where used in the generic sense, the terms "order", "corrective action order", "order of approval", and "regulatory order".

~~((Outdoor Burning~~ *WAC 173 425 030(16)*) - The combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purposes of this regulation, "outdoor burning" includes all types of outdoor burning except agricultural burning and silvicultural burning.))

~~((Other Outdoor Burning~~ - Any type of outdoor burning not specified in *WAC 173 425 020* including, but not limited to, any outdoor burning necessary to protect public health and safety.))

~~((Pellet Stove~~ (*WAC 173 433 030(6)*) - A pellet stove with an air-to-fuel ratio ~~(*App. B*)~~ 35:0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in 40 CFR Part 60 Appendix A, Reference Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-fired Appliances as amended through July 1, 1990.))

~~((Rare and Endangered Plant Regeneration Fires~~ (*WAC 173 425 030(19)*) - Fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chap. 79.70 RCW.))

**Reasonable Alternative** - A method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning.

**Recreational Fire** - Cooking fires, campfires and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or Indian ceremonial purposes. Fires used for debris disposal are not considered recreational fires.

**Regulation** - Any regulation and subsequently adopted amendments of the Regulation 1 of Yakima Regional Clean Air (~~(*Authority*)~~) Agency.

**Residential Burning** - The outdoor burning of leaves, clippings, prunings, and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

~~((Seasoned Wood~~ (*WAC 173 433 030(8)*) - Wood of any species that has been sufficiently dried so as to contain #20% or less moisture by weight.))

~~((PM<sub>10</sub> Second Stage of Impaired Air Quality~~ - Can be declared by the authority when PM<sub>10</sub> is at an ambient level of 105 µg/m<sup>3</sup> (*App. B*) of air measured on a 24-hour average.))

~~((Silvicultural Burning~~ - Outdoor burning relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

- ~~1. Abating a forest fire hazard;~~
- ~~2. Prevention of a forest fire hazard;~~
- ~~3. Instruction of public officials in methods of forest fire fighting;~~
- ~~4. Any Silvicultural operation to improve the forest lands of the state; and~~

~~5. Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.))~~

~~((Solid Fuel Burning Device (WAC 173-433-030(9))~~

~~A device that burns wood, coal, or other nongaseous or non-liquid fuels, which includes any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes any devices used for aesthetic or space heating purposes in a private residence or commercial establishment which has a heat input less than one million Btu per hour. In this regulation the phrase "wood or coal heater" is intended to have the same meaning as solid fuel burning device.))~~

~~((Storm and Flood Debris Burning—Outdoor burning of natural vegetation from storms or floods that have occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the city, county, or state government.))~~

**Threshold Level** - The level that delineates whether or not a source must comply with specific requirements.

~~((Treated Wood (WAC 173-433-030(10))—Any species of wood that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.))~~

~~((Twenty-four (24) Hours (WAC 173-435-020(8))—Any consecutive 24 hours starting at any clock hour.))~~

~~((Tumbleweed Burning—Outdoor burning to dispose of dry plants (typically Russian thistle and tumbleweed mustard plants), that have been broken off, and rolled about, by the wind.))~~

~~((Uncertified Wood Stove (WAC 173-433-030(2))—A woodstove that does not meet emission performance standards when tested by an accredited independent laboratory or is not labeled according to procedures specified by EPA in 40 CFR Part 60, Subpart AAA, Standards of Performance for Residential Wood Heaters as amended through July 1, 1990.))~~

**Urban Growth Area** - Land generally including and associated with an incorporated city which is designated by the county for urban growth under RCW 36.70.030.

~~((Weed Abatement Fire—Outdoor burning to dispose of weeds that is not regulated under chap. 173-430 WAC, which applies to agricultural burning.))~~

**Wood Heater** - Has the same meaning as "solid fuel burning device."

~~((Wood smoke Control Zone—An area where the use of wood heaters and outdoor and agricultural burning is further restricted to reduce the impact of air pollution during an impaired air quality or air pollution episode. The legal land description is located in app. H (pg. H-1), and it is shown on the map in app. I (pg. I-2).))~~

~~((Wood Stove (WAC 173-433-030(11))—An enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in 40 CFR 60 Subpart AAA—Standards of Performance for Residential Wood Heaters as amended through July 1, 1990:~~

~~1. An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;~~

~~2. A useable firebox volume of less than 20 cubic feet;~~

~~3. A minimum burn rate less than 11 lbs./hr. (5 kg/hr) as determined by EPA Reference Method 28;~~

~~4. A maximum weight of 1764 lbs. (800 kg), excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.~~

~~A wood stove is a type of wood heater in this regulation. The term "wood stove" does not include wood cook stoves.))~~

~~**Yakima CO ((Nonattainment)) Maintenance Area** - The legal description is located in appendix D ((pg. H-4)), and it is shown on the map in appendix E ((pg. I-4).))~~

~~**Yakima PM<sub>10</sub> ((Nonattainment)) Maintenance Area** - The legal description is located in Appendix. D ((pg. H-4)), and it is shown on the map in Appendix E ((pg. I-5).))~~

~~**Yakima Urban Area** - The legal land description is located in Appendix D ((H(pg. H-1))), and it is shown on the map in app. E ((H(pg. I-3)).))~~

**The following definitions apply solely to Article 3, section 3.07 (Asbestos Control)**

**AHERA Building Inspector.** A person who has successfully completed the training requirements established by EPA for a building inspector and whose certification is current.

**AHERA Project Designer.** A person who has successfully completed the training requirements established by EPA for an abatement project designer and whose certification is current.

**Asbestos.** The asbestiform varieties of actinolite, amosite, tremolite, chrysotile, crocidolite, or anthophyllite.

**Asbestos-Containing Material (ACM).** Any material containing more than one percent (1%) asbestos.

**Asbestos Project.** Any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of ACM or ACM waste or any other action that disturbs or is likely to disturb any ACM. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released; or the removal of sealants, coatings, and mastic bound in asphalt roofing with no felt layers containing ACM.

**Asbestos Survey.** A written report describing an inspection using the procedures in EPA regulations, or an alternate method that has received the prior written approval from the APCO, to determine whether materials or structures to be worked on, renovated, removed, or demolished contain asbestos.

**Competent Person.** A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy; has the authority to take prompt corrective measures to eliminate the hazards; and has been trained and is currently certified in accordance with the standards established by L&I, OSHA or EPA.

**Component.** Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from ACM.

**Demolition.** Wrecking, razing, leveling, dismantling, or burning of a structure, and making the structure permanently uninhabitable or unusable.

**Facility.** Any institutional, commercial, public, industrial, or residential structure, installation, or building.

**Friable Asbestos-Containing Material.** ACM that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure.

**Glove Bag.** A sealed compartment with attached inner gloves used for the handling of ACM. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations.

**Leak-Tight Container.** A dust and liquid tight container at least 6-mil thick which encapsulates ACM waste and prevents solids or liquids from escaping. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic bags.

**Nonfriable Asbestos-Containing Material.** ACM that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand.

**Owner-Occupied, Single-Family Residence.** Any non-multiple unit building containing living space that is currently occupied by one family who owns the property as their domicile. This includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room".

**Phase Contrast Microscopy (PCM)** - is an approved method of air sampling to measure fiber concentration of the air samples.

**Renovation.** Altering a structure or component any way, other than demolition.

**Suspect Asbestos-Containing Material.** Material that has historically contained asbestos.

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

#### APPENDIX B

#### Definitions of Acronyms and Abbreviations

This appendix contains the definitions for acronyms and abbreviations used in more than one section of the regulation. ((Defined acronyms or abbreviations are identified with "*App. B*" in the text. The source is identified in *italics*.)

ac. - Acre.

ACM - Asbestos Containing Material.

AHERA - Asbestos Hazard Emergency Response Act also known as Title II of Toxic Substances Control Act (TSCA).

AOP - Air Operating Permit.

APCO - Air Pollution Control Officer.

ASIL - Acceptable Source Impact Level.

ASTM - American Society for Materials Testing.

BACT - Best Available Control Technology.

BMP - Best Management Practice.

BTU - British Thermal Unit.

cf - Cubic Feet.

CFR - Code of Federal Regulations.

CO - Carbon Monoxide.

EC - Degrees Centigrade.

EF - Degrees Fahrenheit.

DNR - Washington State Department of Natural Resources.

DOA - Washington State Department of Agriculture.

DOT - Washington State Department of Transportation.

dscf - Dry Standard Cubic Foot.

dscm - Dry Standard Cubic Meter.

Ecology - Washington State Department of Ecology

EPA - U.S. Environmental Protection Agency.

ERC - Emission Reduction Credit(s).

FAA - Federal Aviation Administration.

f/cc - Fibers per cubic centimeter.

FCAA - Federal Clean Air Act. ((also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.))

ft. - Feet.

GEP - Good Engineering Practice.

GIS - Geographic Information System.

HAP - Hazardous Air Pollutant.

HCl - Hydrogen Chloride.

Hg - Mercury.

hr. - Hour.

H<sub>2</sub>S - Hydrogen Sulfide.

H<sub>2</sub>SO<sub>4</sub> - Sulfuric Acid.

**IAW - In Accordance With**

IRS - Internal Revenue Service.

kg - Kilogram.

L&I - Washington State Department of Labor and Industries.

LAER - Lowest Achievable Emission Rate.

lbs - Pounds.

lbs./hr. - Pounds per Hour.

lbs./yr. - Pounds per Year.

lf - Linear Feet.

LP - Liquid Propane.

MACT - Maximum Available Control Technology.

m - Meter.

µg/m<sup>3</sup> - Micrograms per Cubic Meter.

mg/m<sup>3</sup> - Milligrams per Cubic Meter.

ml - Milliliter.

mm - Millimeter.

MTBE - Methyl Tertiary Butyl Ether.

NAAQS - National Ambient Air Quality Standard.

NESHAPS - National Emission Standards for Hazardous Air Pollutants.

NF - National Forest.

NH<sub>3</sub> - Ammonia.

NOC - Notice of Construction.

NOV - Notice of Violation.

NO<sub>2</sub> - Nitrogen Dioxide.

NO<sub>x</sub> - Oxides of Nitrogen.

NPDES - National Pollution Discharge Elimination System.

**Phase Contrast Microscopy (PCM)**

NSPS - New Source Performance Standards.

NSR - New Source Review.

O<sub>2</sub> - Oxygen.

O<sub>3</sub> - Ozone.

OSHA - Occupational Safety and Health Administration.

Pb - Lead.

PCE - Perchloroethylene.

PLM - Polarized Light Microscopy.

ppm - Parts per Million.  
 PSD - Prevention of Significant Deterioration.  
 QC/QA - Quality Control/Quality Assurance.  
 RACT - Reasonably Available Control Technology.  
 RCW - Revised Code of Washington.  
 SEPA - State Environmental Policy Act, chap. 43.21c  
 RCW & chap. 197-11 WAC.  
 sf - Square Feet.  
 SFBD - Solid Fuel Burning Device.  
 SIP - State Implementation Plan.  
 SO<sub>2</sub> - Sulphur Dioxide.  
 SO<sub>x</sub> - Oxides of Sulphur.  
 SM - Synthetic Minor.  
 TAP - Toxic Air Pollutant.  
 TPY - Tons per Year.  
 TRS - Total Reduced Sulfur Compounds.  
 TSP - Total Suspended Particulate.  
 UBC - Uniform Building Code.  
 USC - United States Code.

USDA - United States Department of Agriculture.  
 USDA-FS - U.S. Department of Agriculture, Forest Service.  
 UTM - Universal Transverse Mercator.  
 VOC - Volatile Organic Compound.  
 VOCs - Volatile Organic Compounds.  
 VP - Vapor Pressure.  
 WAC - Washington Administrative Code.  
 WCAA - Washington Clean Air Act, chapter 70A.94  
 RCW.  
 YRCAA - Yakima Regional Clean Air ((~~Authority~~))  
Agency.  
~~> Greater Than.~~  
~~< Less Than.~~  
~~\$ Equal to or More Than.~~  
~~# Equal to or Less Than.~~  
~~= Equals.~~  
 Appendix C repealed  
 Appendix D repealed by Amendment 1 in 2002

APPENDIX ((~~E~~)) C  
 Cross Reference Between Restated Regulation I of 1995 and Regulation 1

SECTION & SUBSECTION NO.		COMMENTS
EXISTING	PROPOSED	
<b>ARTICLE I</b>		
Section 1.01	1.03	Reference to cooperation w/ YIN was removed.
Section 1.02	1.02	
Section 1.03	App. A App. H	Common definitions used in more than one section. Specific definitions used in only one section is in that section. Legal land descriptions for Woodsmoke Control Zone, Yakima Urban Area & Yakima PM <sub>10</sub> Nonattainment Area are in App. H.
<b>ARTICLE II</b>		
Section 2.01	1.04	Rewritten extensively.
	2.01	
Section 2.02		
	2.02A	1.05C
	2.02B	2.01C 2.01E
	2.02C	2.01C162 2.01C3&4 deleted. (( <del>Authority</del> )) <u>Agency</u> will use RCW 70A.94.200 if needed.
	2.02D	2.01D163 Split into subsections.
	2.02E	2.01A3 Powers broadened to include unless limited by the board.
Section 2.03		
	2.03A	1.07B
	2.03B	1.07C
	2.03C	1.07D
	2.03D	1.07E
Section 2.04	1.06C1&2	Rest of 1.06 is a new section.
Section 2.05	1.05D	
<b>Article III</b>		

SECTION & SUBSECTION NO.		COMMENTS
Section 3.01	5.01	
Section 3.02	-----	Not included. Use state law and WAC.
Section 3.03	-----	Not included. Use state law and WAC.
Section 3.04	2.05C3	
<b>Article IV</b>		
Section 4.01		
4.01A	4.01B App. G, A&B	
4.01B	4.01F5	
4.01C	-----	No longer applicable technology.
4.01D	4.01C	
4.01E	4.01F1&2	
4.01F	4.01F1d	
4.01G	4.01F4	
4.01H	4.01G	Fee schedules not included in the regulation.
Section 4.02	4.02	Regulation 1 text repealed by Amendment 1 and replaced by various section of chap. 173-400 WAC.
Section 4.03	4.01D, 4.01E, & 4.02C	Sec. 4.02, Regulation 1 repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.
4.03A		
4.03B		
4.03C		
4.03D		
4.03E		
4.03F		
4.03G		
4.03H		
4.03I		
4.03J		
4.03K		
4.03L		
<b>ARTICLE V</b>		
Section 5.01	3.03C2c, tab. 3.03-1 & 2	
5.01A	3.03I	
5.01A1 5.01A2 5.01A3	tab. 3.03-2 ----- tab. 3.03-2	Requirement dropped.
5.01B	3.03B	This section is not applicable to Silvicultural burning.
5.01C	tab. 3.03-2	
5.01D	1.07A	
5.01E	5.01K	
Section 5.02A	3.03B	Similar language.

SECTION & SUBSECTION NO.		COMMENTS	
	5.02A1	3.03C1, 3.03D1, & 3.03F1	
	5.02A1a	3.03D1a & 3.03F2b	
	5.02A1b & 5.02A1c	3.03C2f(1) & 3.05C2a	
	5.02B	-----	Subsection deleted.
Section 5.03			
	5.03A	3.03A	
	5.03B	3.03C1c	Added the city of Sunnyside to recognize the existing city ordinance.
	5.03C	3.03C1b(2)	Not needed. Covered by 3.03C1c
	5.03C1	-----	
	5.03C2	3.03C2b	
	5.03D	3.03C2c(1) & tab. 3.03-2	Reference to flares, torches, gas burners, incense burners, & insect pots dropped.
	5.03D1	tab. 3.03-1&2	
	5.03D2	tab. 3.03-1&2	
	5.03D3	tab. 3.03-1&2	
	5.03Da6f	3.03E1, 2, & 3 & GRP No. 3.03 - 1	
Section 5.04			
	5.04A	3.03C,D, E, & F	
	5.04A1	tab. 3.03-1	
	5.04A1a	N/A	Offering farmers the choice of a annual permit or specific burning permits.
	5.04A1b	tab. 3.03-1	Deleted requirement for certification by an agricultural extension agent.
	5.04A2	tab. 3.03-1&2 & No.164	GRP
	5.04B	3.03C2d	
	5.04C	3.03C2d	
	5.04D	3.03C2b	
Section 5.05		3.03C1 & 3.03D2a(1)	Exemptions are in Table 3.03-1
5.05 Last Sentence		3.03C2G	Adds "no smoke" to the definition for an extinguished fire.
	5.05A	3.03C2f(1) 3.05C2a	
	5.05A1	3.03Cf (2)6(4)	
	5.05B	3.03C2i	
Section 5.06		3.01B & C	Regulation 1 text repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.
Section 5.07		3.01D & E & App. D	Regulation 1 text repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.
Section 5.08		3.01E	Regulation 1 text repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.



SECTION & SUBSECTION NO.		COMMENTS	
Section 5.09			
	5.09A - D	3.01, 4.02, & App. D	Regulation 1 text repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.
	5.09E 5.09E1 5.09E2 5.09E3 5.09E4	3.07 3.076K 3.07 3.07F -----	This is a total rewrite patterned after the SCAPCA Sect. 9.01 69.08  Fee schedules no longer included in the regulations
	5.09F	-----	Deleted. Obsolete technology.
	5.09G & H	3.01 C & F & App. D	Regulation 1 text repealed by Amendment 1 and replaced by various sections of chap. 173-400 WAC.
Section 5.10		-----	Deleted. This section has not been used and there is no foreseeable use for it.
Section 5.11		3.11	Some text in 2.01. Sec. 3.11, Regulation 1 repealed by Amendment1 and replaced by various sections of chap. 173-400 WAC.
	5.11B	2.01D1	Reference to 2.01D in subsection 3.11E2b2)
	5.11A	3.11E1a&b	
Section 5.12		3.01	
	5.12A & B	3.01C1b (2) & (3)	Sec. 3.01, Regulation 1 repealed by Amendment1 and replaced by various sections of chap. 173-400 WAC.
	5.12C	1.07H	
	5.12D	3.08A4f	
<b>ARTICLE VI</b>			
Section 6.01		4.04A	
Section 6.02		4.04J	Fee schedules no longer included in the regulations
<b>ARTICLE VII</b>			
Section 7.01		3.00E	
	7.01A 7.01A1 7.01A2 7.01A3 7.01A4	3.00E2 3.00E3e(1) 3.00E3e(2) 3.00E6 3.00E7	
	7.01B	3.00E3b	
	7.01C 7.01C1 7.01C2 7.01C3	3.00E4 3.00E4a 3.00E4b -----	Duplicated by other subsections.
	7.01D	3.00E8	
	7.01E	3.00E9	
	7.01F	3.00E10	
	7.01G	3.00E3c	
<b>ARTICLE VIII</b>		Article 5	
Section 8.01		5.02	
	8.01A	----	Deleted. Refer to Chap. 70.94 RCW.
	8.01B	----	Deleted. Refer to Chap. 70.94 RCW.
	8.01C	----	Deleted. Refer to Chap. 70.94 RCW.

SECTION & SUBSECTION NO.		COMMENTS
	8.01D	----
		Deleted. Refer to Chap. 70.94 RCW.
Section 8.02	5.02	
	8.02A	5.02D1&2
	8.02B	5.02E
	8.02C	5.02F
	8.02D	5.02G
	8.02E	5.02H
	8.02F	5.02J
		Delete table on Pg. 8-3.
	8.02G	5.02I
Section 8.03	5.01F	
Section 8.04	5.01E	
Section 8.05	1.07G	
<b>ARTICLE IX</b>		
Section 9.01	3.04A	
Section 9.02	3.04E1 & App.D	Reference to 10% opacity standard for education dropped. App. D deleted by Amendment 1.
Section 9.03	3.04E2	
Section 9.04		
	9.04A	3.04D1
		Definitions of certified stoves removed because this is a UBC requirement. Definitions are still in appendix A.
	9.04B	3.04D1
		Definitions of certified stoves removed because this is a UBC requirement. Definitions are still in appendix A.
	9.04C	3.04D1
		Definitions of certified stoves removed because this is a UBC requirement. Definitions are still in appendix A.
	9.04D	3.04D2
	9.04E	3.04C
Section 9.05	3.05	
	9.05A	3.05B & 3.05D2
	9.05A1	3.05C2b & tab. 3.05-1
	9.05A2	tab. 3.05-1 & 3.05C1a(1)
	9.05A3	tab. 3.05-1 & 3.05C1a(2)
<b>ARTICLE X</b>		
Section 10.01	3.06	
<b>ARTICLE XI</b>		
	1.08	
<b>ARTICLE XII</b>		
	2.03	
Section 2.01	2.03A	
Section 12.02	2.03B	
<b>ARTICLE XIII</b>		
Section 13.01	---	
Section 13.02	---	
Section 13.03	---	
Section 13.04	---	

SECTION & SUBSECTION NO.		COMMENTS
Section 13.05		
13.05A	—	Not included in the regulation. Fees will be adopted by board resolution
13.05B	—	Not included in the regulation. Fees will be adopted by board resolution
13.05C	—	Not included in the regulation. Fees will be adopted by board resolution
13.05D	2.02D3	
SIGNATURE PAGE		Page following the table of contents.

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

**Appendix G repeal Registration Program Information**

**((Appendix F (reserved for later use) repealed))**

**APPENDIX ((#)) D  
Legal Land Descriptions**

This appendix provides the legal land descriptions for geographic areas cited in the regulation ((~~App. A~~)).

~~((A. WOODSMOKE CONTROL ZONE—An area located in Yakima County, Washington, as shown in Attachment 1, which is legally described as follows:))~~

~~((Beginning at a point on a line which is herein called the Western boundary, and which line is a straight line drawn through the following points:))~~

~~((Point A—Where the South right-of-way line of Highway 410 intersects with the North right-of-way line of Highway 12.))~~

~~((Point B—Where the South right-of-way line of the North Fork of Ahtanum Road intersects with the North right-of-way line of the South Fork of Ahtanum Road.))~~

~~((Which line further extends in a Southwesterly direction to a point where it intersects with the South boundary line of Sections 19, 20, 21, 22, 23, 24 or Township 12 N., Range 16 E., W.M. as such boundary line is extended both Easterly and Westerly, and thence Easterly along said South boundary line of said Sections as extended to the Southeast corner of Section 19, Township 12 N., Range 18 E., W.M.; thence North along the East boundary line of said section to the Northeast corner thereof; thence East along the North boundary line of Sections 20, 21, 22, 23, 24, of Township 12 N., Range 18 E., W.M. as extended Easterly to the Northeast corner of Section 21, Township 12 N., Range 20 E., W.M.; thence North along the East boundary line of Sections 16, 9 and 4 of Township 12 N., Range 20 E., W.M.; thence East to the Southeast corner of Section 34, Township 13 N, Range 20 E., W.M.; thence North along the Easterly boundary line of said Section to the intersection with the U.S. Military Reservation, Yakima Training Center; thence Northerly and Westerly along the boundary line of the U.S. Military Reservation to the Southern boundary of Kittitas County; thence West to the Southeast corner of Section 36, Township 15 N., Range 18 E., W.M.; thence North to the Northeast corner of Section 24, Township 15 N., Range 18 E., W.M.; thence West to the Southeast corner of Section 18, Township 15 N, Range 18 E. W.M. thence West to the intersection of the West boundary~~

~~line as herein described; thence Southwesterly along said West boundary line to the point of beginning.))~~

**A. YAKIMA URBAN GROWTH AREA LEGAL DESCRIPTION**  
- An area located in Yakima County, Washington which is legally described in (Yakima City Code-Title 15((~~A~~, Ord.# 40-1985,)) Appendix A), as follows:

~~((Beginning at the southwest corner of Government Lot 5, Section 17, Township 12 N., Range 19 E., W.M.; thence north along the west line of said Section 17 to the southeast corner of Section 7, Township 12 N., Range 19 E., W.M.; thence west along the south line of said Section 7 to the southwest corner of the southeast quarter of said Section 7; thence north along the west line of the east half of said Section 7 to Ahtanum Creek; thence following Ahtanum Creek in a generally westerly direction to the west line of the south-west quarter of the south-east quarter of Section 2, Township 12 N., Range 18 E., W.M.; thence north along said west line to the northwest corner of the southwest quarter of the south-east quarter of said Section 2; thence west along the east-west centerline of the south half of said Section 2 to the west line of said Section 2; thence continuing west along the east-west centerline of the south half of Section 3, Township 12 N., Range 18 E., W.M. to South 34th Avenue; thence north along South 34th Avenue to Ahtanum Road—thence west along Ahtanum Road to 38th Avenue; thence north along 38th Avenue to the north line of Section 3, Township 12 N., Range 18 E., W.M.; thence west along said north line to the northeast corner of Section 4, Township 12 N, Range 18 E., W.M.; thence continuing west along the north line of said Section 4 to the southeast corner of Section 33, Township 13 N., Range 18 E., W.M.; thence continuing west along the south line of said Section 33 to 64th Avenue; thence north along 64th Avenue to the east-west centerline of Sections 32 and 33, Township 13 N, Range 18 E., W.M.; thence west along said east-west centerline to the north-south centerline of the west half of said Section 32; thence north along said north-south centerline to Zier Road; thence west along Zier Road to South 80th Avenue; thence north along South 80th Avenue to Wide Hollow Road; thence west along Wide Hollow Road to the north-south centerline of the east half of Section 30, Township 13 North, Range 18 East W.M.; thence north along said north-south centerline to the east-west centerline of said Section 30; thence west along said~~

~~east-west centerline to the north-south centerline of the west half of said Section 30; thence north along said north-south centerline to the Yakima Valley Canal; thence following the Yakima Valley Canal in a generally westerly direction to its intersection with Tieton Drive; thence west on Tieton Drive to 96th Avenue; thence north on 96th Avenue to the northwest corner of the southwest quarter of Section 19,~~

Township 13 N., Range 18 E., W.M.; thence north along the west section line of said Section 19 to a point 250 feet south of the northwest corner of the southwest quarter of the northwest quarter of said Section 19; thence north 89°33' East to the Tieton Canal; thence following the Tieton Canal in a generally northeasterly direction to the north-south centerline of the east half of said Section 19; thence north along said north-south centerline to the north-south centerline of the east half of Section 18, Township 13 N., Range 18 E., W.M.; thence north along said north-south centerline of said Section 18 to the east-west centerline of the south half of said Section 18; thence east along said east-west centerline to the west line of Section 17, Township 13 N., Range 18 E., W.M.; thence north along said west line to the east-west centerline of said Section 17; thence east along said east-west centerline to the east line of said Section 17; thence north along said east line to the south right-of-way line of the former Burlington Northern Railroad, Cowiche Branch; thence following said south right-of-way line in a generally northeasterly direction to the north right-of-way line of State Route 12; thence following said north right-of-way line in a generally southeasterly direction to Cowiche Creek; thence following Cowiche Creek in a generally northeasterly direction to its confluence with the Naches River; thence following the south bank of the Naches River and the south bank of the Yakima River in a generally easterly direction to the north-south centerline of the east half of Section 12, Township 13 N., Range 18 E., W.M.; thence north along said north-south centerline to Rest Haven Road; thence following Rest Haven Road in a generally southeasterly direction to the south line of Section 8, Township 13 N., Range 19 E., W.M.; thence east along the south line of Sections 8 and 9 to the southwest corner of Lot 3 of that certain short plat recorded in Volume 81, Page 133, Short Plat Records of Yakima County; thence continuing east 260 feet along said south section line; thence North 0°02'34" east 270.51 feet; thence north 38°30'50" east 146.66 feet; thence north 47°30'24"

east 63.80 feet; thence north 77°58'20" east 1,026.46 feet; thence north 71°00' east 255.38 feet; thence north 59°00' east to the north line of the southwest quarter the southwest quarter of Section 10, Township 13 N., Range 19 E., W.M.; thence easterly along said north line to the Northeast corner of said subdivision; thence southerly along the east line of the south-west quarter of the southwest quarter of said Section 10 to the south-east corner of said subdivision; thence westerly along the south line of said Section 10 to the northwest corner of Section 15, Township 13 N., Range 19 E., W.M.; thence southerly along the west line of said Section 15 to the southwest corner of the northwest quarter of said Section 15; thence easterly along said east-west centerline to the south-east corner of the northeast quarter of said Section 15; thence easterly along the east-west centerline of Section 14, Township 13 N., Range 19 E., W.M. to the northeast corner of the northwest quarter of the southwest quarter of said Section 14; thence southerly along the north-south centerline of the west half of said Section 14 to the southeast corner of the south-west quarter of the southwest quarter of said Section 14; thence easterly along the south line of said Section 14 to the northeast corner of Section 23, Township 13 N., Range 19 E., W.M.; thence southerly along the east line of said Section 23

to the southeast corner of said Section 23; thence westerly along the south lines of Sections 23, 22, 21 and 20, Township 13 N., Range 19 E., W.M. to the west bank of the Yakima River; thence following said west bank in a generally southerly direction to a point where it intersects the east right-of-way line of Interstate Highway 82; thence westerly to the point where the west right-of-way line of said interstate highway intersects the south line of Government Lot 2 of Section 17, Township 12 N., Range 19 E., W.M.; thence westerly along the south line of said Government Lot 2 and of Government Lot 5 of said Section 17 to the south-west corner of said Government Lot 5 and the point of beginning.)

Beginning at the southwest corner of Government Lot 5, Section 17, Township 12 North, Range 19 East W.M.; thence north along the west line of said Section 17 to the southeast corner of Section 7, Township 12 North, Range 19 East W.M., thence west along the south line of said Section 7 to the southwest corner of the southeast quarter of said Section 7; thence north along the west line of the east half of said Section 7 to Ahtanum Creek, thence following Ahtanum Creek in a generally westerly direction to the west line of the south-west quarter of the southeast quarter of Section 2, Township 12 North, Range 18 East W.M.; thence north along said west line to the northwest corner of the southwest quarter of the southeast quarter of said Section 2; thence west along the east-west centerline of the south half of said Section 2 to the west line of said Section 2; thence continuing west along the east-west centerline of the south half of Section 3, Township 12 North, Range 18 East W.M. to South 34th Avenue; thence north along South 34th Avenue to Ahtanum Road—thence west along Ahtanum Road to 38th Avenue; thence north along 38th Avenue to the north line of Section 3, Township 12 North, Range East W.M.; thence west along said north line to the northeast corner of Section 4, Township 12 North, Range 18 East W.M.; thence continuing west along the north line of said Section 4 to the southeast corner of Section 33, Township 13 North, Range 18 East W.M.; thence continuing west along the south line of said Section 33 to 64th Avenue; thence north along 64th Avenue to the east-west centerline of Sections 32 and 33, Township 13 North, Range 18 East W.M.; thence west along said east-west centerline to the north-south centerline of the west half of said Section 32; thence north along said north-south centerline to Zier Road; thence west along Zier Road to South 80th Avenue; thence north along South 80th Avenue to Wide Hollow Road; thence west along Wide Hollow Road to the north-south centerline of the east half of Section 30, Township 13 North, Range 18 East W.M.; thence north along said north-south centerline to the east-west centerline of said Section 30; thence west along said east-west centerline to the north-south centerline of the west half of said Section 30; thence north along said north-south centerline to the Yakima Valley Canal; thence following the Yakima Canal in a generally westerly direction to its intersection with Tieton Drive; thence west on Tieton Drive to 96th Avenue; thence north on 96th Avenue to the north-west corner of the southwest quarter of Section 19, Township 13 North, Range 18 East W.M.; thence north along the west section line of said Section 19 to a point 250 feet south of the northwest corner of the southwest quarter of the northwest quarter of said Section 19; thence north 89°33' East to the

Tieton Canal; thence following the Tieton Canal in a generally northeasterly direction to the north-south centerline of the east half of said Section 19; thence north along said north-south centerline to the north-south centerline of the east half of Section 18, Township 13 North, Range 18 East W.M.; thence north along said north-south centerline of said Section 18 to the east-west centerline of the south half of said Section 18; thence east along said east-west centerline to the west line of Section 17, Township 13 North, Range 18 East W.M.; thence north along said west line of the east-west centerline of said Section 17; thence east along said east-west centerline to the east line of said Section 17; thence north along said east line to the south right-of-way line of the Burlington Northern Railroad, Cowiche Branch; thence following said south right-of-way line in a generally northeasterly direction to the north right-of-way line of State Route 12; thence following said north right-of-way line in a generally southeasterly direction to Cowiche Creek; thence following Cowiche Creek in a generally northeasterly direction to its confluence with the Naches River; thence following the south bank of the Naches River and the south bank of the Yakima River in a generally easterly direction to the north-south centerline of the east half of Section 12, Township 13 North, Range 18 East W.M.; thence north along said north-south centerline to Rest Haven Road; thence following Rest Haven Road in a generally south-easterly direction to the south line of Section 8, Township 13 North, Range 19 East W.M.; thence east along the south line of Sections 8 and 9 to the southwest corner of Lot 3 of that certain short plat recorded in Volume 81, Page 133, Short Plat Records of Yakima County; thence continuing east 260 feet along said south section line; thence north 0°22'34" east 270.51 feet; thence north 38°30'50" east 146.66 feet; thence north 47°30'24" east 63.80 feet; thence north 77°58'20" east 1,026.46 feet; thence north 71°00' east 255.38 feet; thence north 59°00' east to the north line of the southwest quarter of the southwest quarter of Section 10, Township 13 north, Range 19 E.W.M., thence easterly along said north line to the Northeast corner of said subdivision; thence southerly along the east line of the southwest quarter of the southwest quarter of said Section 10 to the southeast corner of said subdivision; thence westerly along the south line of the said Section 10 to the northwest corner of Section 15, Township 13 North, Range 19 E.W.M., thence southerly along the west line of said Section 15 to the southwest corner of the northwest quarter of said Section 15; thence easterly along said east-west centerline to the southeast corner of the northeast quarter of said Section 15; thence easterly along the east-west centerline of Section 14, Township 13 North, Range 19 E.W.M. to the northeast corner of the northwest quarter of the southwest quarter of said Section 14; thence southerly along the north-south centerline of the west half of said Section 14 to the southeast corner of the southwest quarter of the southwest quarter of said Section 14; thence east-

erly along the south line of said Section 14 to the northeast corner of Section 23, Township 13 North, Range 19 E.W.M.; thence southerly along the east line of said Section 23 to the southeast corner of said Section 23; thence westerly along the south lines of Sections 23, 22, 21 and 20, Township 13 North, Range 19 E.W.M. to the west bank of the Yakima River; thence following said west bank in a generally southerly direction to a point where it intersects the east right-of-way line of Interstate Highway 82; thence westerly to the point where the west right-of-way line of said interstate highway intersects the south line of Government Lot 2 of Section 17, Township 12 North, Range 19 E.W.M.; thence westerly along the south line of said Government Lot 2 and of Government Lot 5 of said Section 17 to the southwest corner of said Government Lot 5 and the point of beginning.

(Ord. 2016-029 § 1 (Exh. A) (part), 2016: Ord. 2947 Appendix A, 1986).

**B. YAKIMA CO MAINTENANCE ((NONATTAINMENT)) AREA. (40 CFR 81.348)**

The boundaries and UTM ((~~App. B~~)) coordinates are described as the following:

UTMW	UTMN	Street - Intersection
689.06	5160.91	S 16th Ave/W Mead Ave
688.92	5165.05	S 16th Ave/Hthwy Ave
690.35	5465.10	E "I" St/N 1st St
690.49	5164.63	N 1st St/E "G" St
691.31	5165.01	E "G" St N N 8th St
691.70	5164.07	N 8th St/Pitcher St
692.42	5164.09	Pitcher St/I-82 Intrchge
693.18	5162.80	Nob Hill Blvd Intrchge
693.58	5161.61	Nob Hill Blvd Intrchge
693.66	5159.57	Rudkin Road Intrchge
693.06	5159.55	S 1st Old Town Rd/Mn St
692.43	5160.32	W Washington/S 1st St
682.05	5161.07	E Mead Ave/S 1st St
689.06	5160.91	S 16th Ave/W Mead Ave

**C. YAKIMA PM<sub>10</sub> MAINTENANCE ((NONATTAINMENT)) AREA. (40 CFR 81.349)**

The corners and UTM coordinates are:

Corner	UTMW	UTMN
Southeast	694.00	5157.00
Southwest	681.00	5157.00
Northwest	681.00	5172.00
Northeast	694.00	5172.00

**APPENDIX E (†)**

**Maps**

Name	Page Number
<b>Woodsmoke Control Zone</b>	<b>1-2</b>
<b>Yakima Urban Growth Area</b>	<b>E1-3 1</b>

<b>Name</b>	<b>Page Number</b>
<b>Yakima CO Nonattainment Area</b>	<b>14</b>
<b>Yakima PM<sub>10</sub> Nonattainment Area</b>	<b>15</b>

APPENNDIX J (Reserved for later use) repealed

~~APPENNDIX K (Reserved for later use)~~ **REPEALED BY AMENDMENT 1**

APPENNDIX L REPEALED

**ADOPTION HISTORY REGULATION 1 OF THE YAKIMA REGIONAL CLEAN AIR AGENCY ((AUTHORITY))**

Amend. No.	Dates		Action	Sections/ Appendix	Comments
	Adopted	Effective			
N/A	March 8, 2000	May 1, 2000	Adoption of Regulation 1	All	Initial local adoption.
Amend. - 1	October 9, 2002	December 1, 2002	Repeal sections and appendices in full.	2.04	Replaced by WAC 173-400-171 for all public participation except for air operating permits. Public participation for air operating permits is replaced by WAC 173-401, Part IX.
				3.01	Replaced by Chap. 173-400 WAC & RCW 70A.94.640 & 645.
				3.11	Replaced by Chap. 173-400 WAC.
				4.02	Replaced by Chap. 173-400 WAC.
				app. D	Replaced by Chap. 173-400 WAC and 40 CFR Parts 51, 60, 61, & 63.
Amend. - 1	October 9, 2002	December 1, 2002	Removes definitions included in chap. 173-400 WAC, and makes minor edits.	app. A.	Replaced by definitions in WAC 173-400-030, 112, & 113

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

**Reviser's note:** The unnecessary (YRCAA) in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 20-16-002**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Washington Medical Commission)  
 [Filed July 22, 2020, 12:27 p.m.]

Continuance of WSR 20-14-048.  
 Preproposal statement of inquiry was filed as WSR 18-02-079.

Title of Rule and Other Identifying Information: WAC 246-919-010 through 246-919-770 (relating to allopathic physicians), the Washington medical commission (commission) is proposing amendments to update and modernize the rules to align with current law and practice.

Hearing Location(s): On August 19, 2020, at 2:30 p.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Register for this webinar <https://attendee.gotowebinar.com/register/9003257913839389199>. Webinar ID: 738-004-915.

Date of Intended Adoption: August 19, 2020.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by August 12, 2020.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov), by August 12, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The hearing virtual meeting room information has been changed because we have upgraded from GoToMeeting to GoToWebinar to accommodate more participants.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.002, 43.70.041, 18.340.020, and SB 5764 (chapter 66 [55], Laws of 2019).

July 22, 2020

Melanie de Leon  
Executive Director

**Chapter 246-919 WAC**  
**WASHINGTON MEDICAL ((QUALITY-  
ASSURANCE)) COMMISSION**

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

**WAC 246-919-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" is an individual who has completed the application form and has paid the application fee.

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

(3) "Emergent" means a circumstance calling for immediate action.

(4) "Hospital" means any health care institution licensed ((pursuant to)) under chapter 70.41 RCW.

(5) "Intermittent" means providing services on a part-time or full-time nonpermanent basis.

(6) ~~((("Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.~~

~~(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(8)) "Physician" means a ((physician)) person licensed ((pursuant to)) under chapter 18.71 RCW.~~

~~((9)) (7) "Unprofessional conduct" ((as used in these regulations shall)) means the conduct described ((in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described)) in RCW 18.130.180 ((for conduct occurring on or after June 11, 1986)).~~

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-020 Commission address.** The commission's official mailing address is:

Washington Medical ((Quality Assurance)) Commission  
Department of Health  
P.O. Box 47866  
Olympia, WA 98504-7866

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-300 Application withdrawals.** An application for a license may not be withdrawn after the commission ((or the reviewing commission member)) determines that grounds exist for denial of the license or for the issuance of a conditional license. Applications ((which)) that are subject to investigation for unprofessional conduct or impaired practice may not be withdrawn.

AMENDATORY SECTION (Amending WSR 04-04-067, filed 2/2/04, effective 3/4/04)

**WAC 246-919-320 Approved United States and Canadian medical schools.** For the purposes of ((the Medical Practice Act)) RCW 18.71.055, the commission approves ((those)) medical schools accredited by the Liaison Committee on Medical Education.

AMENDATORY SECTION (Amending WSR 05-07-024, filed 3/7/05, effective 4/7/05)

**WAC 246-919-330 Postgraduate medical training ((defined)).** (1) ~~((For the purposes of this chapter,))~~ Postgraduate medical training means clinical training approved by the commission in general medicine or surgery, or a specialty or subspecialty in the field of medicine or surgery as recognized by the American Board of Medical Specialties ~~((and listed in the 2004 Official ABMS Annual Report and Reference Handbook, published March 18, 2004))~~ listed in the 2017-2018 ABMS Board Certification Report and new specialties or subspecialties approved by the commission.

(2) The commission approves only the following postgraduate clinical training courses:

(a) Programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) ~~((which are listed in the 1984-85 directory of residency programs, or programs approved by the Accreditation Council))~~ at the time of residency.

(b) Programs accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC), or programs accredited by the RCPSC or CFPC at the time of residency.

(3) Postgraduate medical training includes, but is not limited to, internships, residencies and medical or surgical fellowships.

(4) A physician must complete two consecutive years of postgraduate medical training in no more than two programs. The physician must acquire this training after completion of a formal course of undergraduate medical instruction outlined in RCW 18.71.055. The commission will accept only satisfactory clinical performance evaluations.

AMENDATORY SECTION (Amending WSR 01-18-086, filed 9/5/01, effective 10/6/01)

**WAC 246-919-340 Additional requirements for international medical school graduates.** All graduates of medical schools outside the United States, Canada, or Puerto Rico must ~~((have either))~~ satisfy one of the following requirements:

(1) ~~((Been licensed))~~ Held a full and unrestricted license to practice medicine in another state prior to 1958;

(2) Obtained a certificate with an indefinite status granted by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(3) Successfully completed one year of supervised academic clinical training in the United States, commonly referred to as a Fifth Pathway program.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-355 Examination ((scores) accepted by the commission.** ((Examinations accepted by the Washington state medical quality assurance commission:))

(1) The commission ((adopts)) accepts the United States Medical Licensing Examination (USMLE) as the examination ((accepted by the commission)) for licensure.

(2) The minimal passing scores for each component of any approved examination combination shall be a score of seventy-five as defined by the examining authority.

(3) ((Applicants who do not pass Step 3 of the USMLE examination after three sittings within seven years after passing the first examination, either Step 1 or Step 2, or acceptable combination, shall demonstrate evidence satisfactory to the commission of having completed a remedial or refresher medical course approved by the commission prior to being permitted to sit for the examination again. Applicants who do not pass after the fourth sitting may not sit for another examination without completing an additional year of postgraduate training or satisfying any other conditions specified by the commission.

(4) To be eligible for USMLE Step 3, the applicant must:

(a) Have obtained the M.D. degree;

(b) Have successfully completed the Federation Licensure Examination (FLEX) Component 1 or both National Boards Examination (NBE) Parts I and II or USMLE Steps 1 and 2 or NBE Part I and USMLE Step 2 or Step 1 and NBE Part II; and

(c) Be certified by the ECFMG if a graduate of an international medical school, or have successfully completed a fifth pathway program; and postgraduate training year in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education.) Applicants must have passed all components of the USMLE within seven years after passing the first examination. The commission recognizes that an applicant with a combined degree may require an exception to the seven-year requirement. The commission will review exception requests on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 06-18-042, filed 8/30/06, effective 9/30/06)

**WAC 246-919-360 Examinations accepted for ((reciprocity or waiver)) licensure.** (1) The commission may accept certain examinations as a basis for licensure. These examinations include USMLE, ((FLEX, NBE)) Federation Licensure Examination (FLEX), National Boards Examination (NBE), or those given by the other states, or territories of the United States. Those who have taken the Licentiate of the Medical Council of Canada ((L.M.C.C.)) (LMCC) and holds a valid LMCC certification obtained after 1969, may be granted a license without examination.

(2) Examination combination acceptable. Any applicant who has successfully completed Part I (NBE) or Step 1 (USMLE) plus Part II or Step 2 plus Part III or Step 3; or FLEX Component 1 plus Step 3; or Part I or Step 1, plus Part II or Step 2, plus FLEX Component 2 shall be deemed to have successfully completed a medical licensure examination

as required by RCW 18.71.070. (For clarification, see Table 1.)

Table 1

Accepted Examinations taken in Sequence	Other Acceptable Combinations
NBME Part I <i>plus</i> NBME Part II <i>plus</i> NBME Part III	NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> NBME Part III or USMLE Step 3
FLEX Component 1 <i>plus</i> FLEX Component 2	FLEX Component 1 <i>plus</i> USMLE Step 3  or NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> FLEX Component 2
USMLE Step 1 <i>plus</i> USMLE Step 2 <i>plus</i> USMLE Step 3	

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-365 FLEX examination standards.**

((Reciprocity applicants who were licensed in another state by passing the FLEX examination will be eligible for a waiver of examination if the applicant received a FLEX weighted average score of at least 75. The score may be obtained in a single setting of the three-day examination or by averaging the individual day scores from different examinations. The individual day scores will be averaged according to the following formula:

Day 1 equals 1/6.

Day 2 equals 2/6.

Day 3 equals 3/6.

The overall average score shall be truncated to the nearest whole number (i.e., an average of 74.9 equals 74). Single subject averaging is not permitted.) The commission will accept the Federation Licensure Examination (FLEX) weighted average of 75 reported from the Federation of State Medical Boards. All FLEX scores must be submitted directly from the Federation of State Medical Boards. FLEX scores reported by other states will not be accepted.



AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-370 Special purpose examination.** (1)

The commission may require an applicant (~~((or licensee))~~) to pass the Special Purpose Examination (SPEX) or any other examination deemed appropriate. An applicant (~~((or licensee))~~) may be required to take an examination when the commission has concerns with the applicant's (~~((or licensee's))~~) ability to practice competently for reasons which may include, but are not limited to, the following:

- (a) Resolved or pending malpractice suits;
- (b) Pending action by another state licensing authority;
- (c) Actions pertaining to privileges at any institution; or
- (d) Not having practiced for (~~((an interval of time))~~) the immediate two years prior to the application.

(2) The minimum passing score on the SPEX examination shall be seventy-five. The passing score for any other examination under this rule shall be determined by the commission.

AMENDATORY SECTION (Amending WSR 17-18-098, filed 9/6/17, effective 10/7/17)

**WAC 246-919-395 Substantially equivalent licensing standards—Temporary practice permit.** (1) An applicant who holds an unrestricted, active license in another state with licensing standards substantially equivalent to those in Washington may apply for a temporary practice permit authorizing the applicant to practice as a physician in Washington.

(2) The commission will issue the physician a temporary practice permit if the following requirements are met:

(a) The applicant submits a completed application for a physician and surgeon license on a form provided by the commission on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) The applicant submits payment of the application fee and temporary practice permit fee (~~((pursuant to))~~) under WAC 246-919-990;

(c) The commission receives the American Medical Association's physicians' data profile verifying states in which the applicant is or was licensed;

(d) The commission receives the practitioner profile from the Federation of State Medical Boards;

(e) The applicant requests and the commission receives written verification attesting that the applicant has a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment from all states which the applicant is or was licensed;

(f) The applicant is not subject to denial of a license or issuance of a conditional license under chapter 18.130 RCW; and

(g) The applicant is licensed in a state that has licensing standards substantially equivalent to Washington.

(3) The temporary practice permit allows the applicant to work in the state of Washington as a physician without restriction until the permit expires. The temporary practice permit is a license to practice medicine.

(4) The temporary practice permit shall expire upon the issuance of a license by the commission; initiation of an investigation by the commission of the applicant; or ninety

days after the temporary practice permit is issued, whichever occurs first. The temporary permit will not be renewed, reissued, or extended.

(5) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 10-05-029, filed 2/9/10, effective 2/11/10)

**WAC 246-919-396 Background check—Temporary practice permit.** The (~~((medical quality assurance commission (MQAC)))~~) commission conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The (~~((MQAC))~~) commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the (~~((MQAC))~~) commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The (~~((MQAC))~~) commission will issue a temporary practice permit that is valid for six months. A (~~((one time))~~) one-time extension of six months will be granted if the national background check report has not been received by the (~~((MQAC))~~) commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit is a license to practice medicine.

(3) The (~~((MQAC))~~) commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

NEW SECTION

**WAC 246-919-397 How to obtain a temporary practice permit—Military spouse.** A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for physicians.

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

(b) Left employment in another state to accompany the military person to Washington;

(c) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for a physician to those in Washington; and

(d) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the physician.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit to the commission the necessary application, fee(s), fingerprint card if required, and documentation for the license;

(b) Attest on the application that the applicant left employment in another state to accompany the military person;

(c) Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for physicians;

(d) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for physicians in Washington;

(e) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) Documentation of a state registered domestic partnership.

(f) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

(b) "Military person" means a person serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States.

**AMENDATORY SECTION** (Amending WSR 16-16-028, filed 7/22/16, effective 8/22/16)

**WAC 246-919-422 Transition from post-graduate limited license to full license.** In order to obtain full license status, ~~((individuals))~~ a physician with a post-graduate limited Washington license will pay the fee difference between the limited license application and the full license application. This license will expire on their second birth date after issuance and every two years thereafter.

**AMENDATORY SECTION** (Amending WSR 17-07-043, filed 3/8/17, effective 4/8/17)

**WAC 246-919-435 Training in suicide assessment, treatment, and management.** (1) A licensed physician, other than a resident holding a limited license issued under RCW 18.71.095(3), must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

~~((3))~~ ~~((Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.~~

~~((4))~~ ~~((Beginning July 1, 2017,))~~ The training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~((5))~~ ~~((4))~~ The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

~~((6))~~ ~~((5))~~ The commission exempts any licensed physician from the training requirements of this section if the physician has only brief or limited patient contact, or no patient contact.

**AMENDATORY SECTION** (Amending WSR 01-03-115, filed 1/22/01, effective 2/22/01)

**WAC 246-919-475 Expired license.** (1) If the license has been expired for three years or less, the ~~((practitioner))~~ physician must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has been expired for over three years, the ~~((practitioner))~~ physician must:

(a) Reapply for ~~((licensing))~~ licensing under current requirements as stipulated in RCW 18.71.050 (1)(b) and WAC 246-919-330; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

**AMENDATORY SECTION** (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

**WAC 246-919-480 Retired active license.** (1) To obtain a retired active license a physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician with a retired active license may not receive compensation for health care services;

(3) A physician with a retired active license may practice only in emergent or intermittent circumstances; and

(4) A physician((s)) with a retired active license must renew every two years and must report one hundred hours of continuing medical education at every renewal. The commission will accept a maximum of forty hours of continuing medical education in Categories II through V, as defined in WAC 246-919-460, during each renewal period. There is no limit to the number of hours that may be accepted in Category I.

AMENDATORY SECTION (Amending WSR 97-21-053, filed 10/13/97, effective 11/13/97)

**WAC 246-919-520 Revocation of a physician's license.** ~~((This section sets forth the procedure by which a respondent))~~ A physician may request a review by the ~~((medical quality assurance))~~ commission of its decision to revoke the ~~((respondent's))~~ physician's license under RCW 18.71.-019:

(1) If the commission issues a final order revoking a ~~((respondent's))~~ physician's license following an adjudicative proceeding, the ~~((respondent))~~ physician may request a review of the decision by a review panel of the commission.

(2) The ~~((respondent))~~ physician shall file a written request with the commission within twenty days of the effective date of the final order. The ~~((respondent))~~ physician may not request an extension of the twenty-day period to file a request for review.

(3) The ~~((respondent's))~~ physician's request for review of the final order does not change the effective date of the final order.

(4) A review panel shall review the final order. The review panel is composed of the members of the commission who did not:

(a) Review the initial investigation and make the decision to issue a statement of charges against the ~~((respondent))~~ physician in this matter; or

(b) Hear the evidence at the adjudicative proceeding and issue the final order revoking the ~~((respondent's))~~ physician's license.

(5) Within seven days of receipt of the request for review of the final order, a scheduling order is issued setting a date for the review hearing, and a date for the filing of written argument by the parties. The review hearing must take place within sixty days of the ~~((respondent's))~~ physician's request for review of the final order.

(6) The review panel shall convene in person for the review hearing on the date set in the scheduling order. If a commission member is unavailable to meet on the scheduled date, a pro tempore member shall take that person's place on the review panel. At the review hearing, the review panel:

(a) Shall review the final order;

(b) Shall review written argument presented by the parties; and

(c) May hear oral argument by the parties.

(7) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is not the appropriate

sanction, it shall issue an amended order setting the appropriate sanction(s) necessary to protect the public.

(8) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is appropriate, it shall issue an order confirming that decision.

AMENDATORY SECTION (Amending WSR 17-18-032, filed 8/28/17, effective 9/28/17)

**WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings.** (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The ~~((medical quality assurance))~~ commission establishes the following rule for physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this ~~((rule))~~ section unless the context clearly indicates otherwise:

(a) ~~(("Commission" means the medical quality assurance commission.~~

~~((b)))~~ "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((c)))~~ "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

~~((d)))~~ "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

~~((e)))~~ "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

~~((f)))~~ "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaf-

fect. Minimal sedation is limited to oral, intranasal, or intramuscular medications (~~(-or both)~~).

~~((g))~~ (f) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

~~((h))~~ (g) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

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

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, ~~((or))~~ an ambulatory surgical facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-919-602.

(d) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-919-602.

(e) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of ~~((his or her))~~ their specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification.

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from an accrediting entity approved by the commission.

(b) The commission may approve an accrediting entity that demonstrates to the satisfaction of the commission that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the commission;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a commission-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one commission-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group ~~((e.g., ACLS, PALS or APLS))~~ must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

## (9) Sedation assessment and management.

~~((a))~~ Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

~~((b))~~ (a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient who enters a deeper level of sedation than intended.

~~((c))~~ (b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, heart rate and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

## (10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

- (i) Identity of the patient;
- (ii) History and physical, diagnosis and plan;
- (iii) Appropriate lab, X-ray or other diagnostic reports;
- (iv) Appropriate preanesthesia evaluation;
- (v) Narrative description of procedure;
- (vi) Pathology reports, if relevant;
- (vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;
- (viii) Provision for continuity of postoperative care; and
- (ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

- (i) The type of sedation or anesthesia used;
- (ii) ~~((Drugs (name and dose)))~~ Name, dose, and time of administration of drugs;
- (iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;
- (iv) Fluids administered during the procedure;
- (v) Patient weight;
- (vi) Level of consciousness;
- (vii) Estimated blood loss;
- (viii) Duration of procedure; and
- (ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

NEW SECTION**WAC 246-919-602 Administration of deep sedation and general anesthesia by physicians in dental offices.** (1)

Purpose. The purpose of this section is to govern the administration of deep sedation and general anesthesia by physicians in dental offices. The commission establishes these standards to promote effective perioperative communication and appropriately timed interventions, and mitigate adverse events and outcomes.

(2) Definitions. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Administering physician" means an individual licensed under chapter 18.71 RCW who administers deep sedation or general anesthesia to a patient in a dental office.

(b) "Deep sedation" has the same meaning as in WAC 246-919-601.

(c) "Dental office" means any facility where dentistry is practiced, as defined in chapter 18.32 RCW, except a hospital licensed under chapter 70.41 RCW or ambulatory surgical facility licensed under chapter 70.230 RCW.

(d) "General anesthesia" has the same meaning as in WAC 246-919-601.

(e) "Perioperative" includes the three phases of surgery: Preoperative, intraoperative, and postoperative.

(3) An administering physician is responsible for the perioperative anesthetic management and monitoring of a patient and must ensure patient care, recordkeeping, equipment, personnel, facilities, and other related matters are in accordance with acceptable and prevailing standards of care including, but not limited to, the following:

(a) Preoperative requirements. An administering physician shall ensure the patient has undergone a preoperative health evaluation and document review of the evaluation. The physician shall also conduct and document a risk assessment to determine whether a patient is an appropriate candidate for deep sedation or general anesthesia and discussion of the risks of deep sedation or general anesthesia with the patient. For a pediatric patient, this assessment must include:

- (i) Whether the patient has specific risk factors that may warrant additional consultation before administration of deep sedation or general anesthesia, and how each patient meets

criteria for deep sedation or general anesthesia in an outpatient environment. This must include a specific inquiry into whether the patient has signs and symptoms of sleep-disordered breathing or obstructive sleep apnea;

(ii) A discussion with a parent or guardian of a pediatric patient of the particular risks of deep sedation or general anesthesia for a patient who: (A) Is younger than six years old; (B) has special needs; (C) has airway abnormalities; or (D) has a chronic condition. This discussion must include reasoning why the pediatric patient can safely receive deep sedation or general anesthesia in an outpatient environment and any alternatives.

(b) Medical record. The anesthesia record must be complete, comprehensive, and accurate for each patient, including documentation at regular intervals of information from intraoperative and postoperative monitoring. The record-keeping requirements under WAC 246-919-601 and 246-817-770 apply to an administering physician, including the elements of a separate anesthesia record. The anesthesia record must also include temperature measurement and a heart rate and rhythm measured by electrocardiogram. For a pediatric patient, the administering physician shall ensure vital signs are postoperatively recorded at least at five-minute intervals until the patient begins to awaken, then recording intervals may be increased to ten to fifteen minutes.

(c) Equipment. An administering physician shall ensure the requirements for equipment and emergency medications under WAC 246-817-724 and 246-817-770 are met, regardless of any delineated responsibility for furnishing of the equipment or medications in a contract between the physician and dental office. Additionally, for a pediatric patient, an administering physician shall ensure there is a complete selection of equipment for clinical application to the pediatric patient. The physician shall also ensure equipment is available in the recovery area to meet the requirements in this section for monitoring during the recovery period. The physician shall ensure all equipment and medications are checked and maintained on a scheduled basis.

(d) Recovery and discharge requirements. An administering physician shall ensure that:

(i) A physician licensed under chapter 18.71 RCW capable of managing complications, providing cardiopulmonary resuscitation, and currently certified in advanced cardiac life support measures appropriate for the patient age group is immediately available for a patient recovering from anesthesia. For a pediatric patient, the physician shall also be trained and experienced in pediatric perioperative care;

(ii) At least one licensed health care practitioner experienced in postanesthetic recovery care and currently certified in advanced cardiac life support measures appropriate for the patient age group visually monitors the patient, at all times, until the patient has met the criteria for discharge from the facility. Consideration for prolonged observation must be given to a pediatric patient with an anatomic airway abnormality, such as significant obstructive sleep apnea. A practitioner may not monitor more than two patients simultaneously, and any such simultaneous monitoring must take place in a single recovery room. If a practitioner is qualified to administer deep sedation or general anesthesia, the practitioner may not simultaneously administer deep sedation or

general anesthesia and perform recovery period monitoring functions. The practitioner shall provide: (A) Continuous respiratory monitoring via pulse oximetry and cardiovascular monitoring via electrocardiography during the recovery period; and (B) monitoring, at regular intervals, during the recovery period of the patient for color of mucosa, skin, or blood, oxygen saturation, blood pressure, and level of consciousness; and (C) measurement of temperature at least once during the recovery period. If a patient's condition or other factor for the patient's health or safety preclude the frequency of monitoring during the recovery period required by this section, the practitioner must document the reason why such a departure from these requirements is medically necessary;

(iii) Emergency equipment, supplies, medications, and services comply with the provisions of WAC 246-817-770 and are immediately available in all areas where anesthesia is used and for a patient recovering from anesthesia. Resuscitative equipment and medications must be age and size-appropriate, including for care of a pediatric patient, pediatric defibrillator paddles, and vasoactive resuscitative medications and a muscle relaxant such as dantrolene sodium, which must be immediately available in appropriate pediatric concentrations, as well as a written pediatric dose schedule for these medications. The administering physician shall ensure that support personnel have knowledge of the emergency care inventory. All equipment and medications must be checked and maintained on a scheduled basis; and

(iv) Before discharge, the patient is awake, alert, and behaving appropriately for age and developmental status, normal patient vital signs, and if applicable, a capable parent or guardian present to assume care of the patient.

(e) Emergency care and transfer protocol. An administering physician shall monitor for, and be prepared to treat, complications involving compromise of the airway and depressed respiration, particularly with a pediatric patient. The physician shall ensure that in the event of a complication or emergency, his or her assistive personnel and all dental office clinical staff are well-versed in emergency recognition, rescue, and emergency protocols, and familiar with a written and documented plan to timely and safely transfer a patient to an appropriate hospital.

(4)(a) An administering physician shall submit to the commission a report of any patient death or serious perioperative complication, which is or may be the result of anesthesia administered by the physician.

(b) The physician shall notify the commission or the department of health, by telephone, email, or fax within seventy-two hours of discovery and shall submit a complete written report to the commission within thirty days of the incident. The written report must include the following:

(i) Name, age, and address of the patient;

(ii) Name of the dentist and other personnel present during the incident;

(iii) Address of the facility or office where the incident took place;

(iv) Description of the type of anesthetic being utilized at the time of the incident;

(v) Dosages, if any, of any other drugs administered to the patient;

(vi) A narrative description of the incident including approximate times and evolution of symptoms;

(vii) Additional information which the commission may require or request.

**AMENDATORY SECTION** (Amending WSR 07-03-177, filed 1/24/07, effective 3/1/07)

**WAC 246-919-605 Use of laser, light, radiofrequency, and plasma devices as applied to the skin.** (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

#### PHYSICIAN RESPONSIBILITIES

(4) A physician must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include all of the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of treating professionals.

#### PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) A physician who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) A physician has a written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated ~~((pursuant to))~~ under this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made;

(e) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment;

(f) The delegating physician ensures that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised professional may complete the initial treatment if the physician is called away to attend to an emergency; and

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of

the delegating physician provided that there is a local back-up physician who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. The local back-up physician shall be reachable by phone and able to see the patient within sixty minutes. The delegating physician's absence from the site where the treatment occurs must be for brief and intermittent periods of time. The delegating physician's absence from the site where the treatment occurs cannot be an ongoing arrangement.

(11) The use of, or the delegation of the use of, an LLRP device by a physician assistant is covered by WAC 246-918-125.

**AMENDATORY SECTION** (Amending WSR 10-11-001, filed 5/5/10, effective 6/5/10)

**WAC 246-919-606 Nonsurgical medical cosmetic procedures.** (1) The purpose of this rule is to establish the duties and responsibilities of a physician who delegates the injection of medication or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfigurement, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011(3).

(2) This rule does not apply to:

- (a) Surgery;
- (b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;
- (c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;
- (d) The use of nonprescription devices; and
- (e) Intravenous therapy.

(3) Definitions. ~~((These))~~ The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

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

~~((e)))~~ "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

#### PHYSICIAN RESPONSIBILITIES

(4) A physician must be fully and appropriately trained in a nonsurgical medical cosmetic procedure prior to per-

forming the procedure or delegating the procedure. The physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the commission.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, a physician must:

- (a) Take a history;
- (b) Perform an appropriate physical examination;
- (c) Make an appropriate diagnosis;
- (d) Recommend appropriate treatment;
- (e) Obtain the patient's informed consent;
- (f) Provide instructions for emergency and follow-up care; and
- (g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

- (a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;
- (b) A mechanism to review the adherence of supervised health care professionals to written protocols;
- (c) A mechanism to monitor the quality of treatments;
- (d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection ~~((4))~~ (11)(d) of this section and physician supervising practices; and
- (e) Ongoing training to maintain and improve the quality of treatment and performance of supervised health care professionals.

(9) A physician may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

#### PHYSICIAN DELEGATION

(11) A physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

- (a) The treatment in no way involves surgery as that term is understood in the practice of medicine;
- (b) The physician delegates procedures that are within the delegate's lawful scope of practice;
- (c) The delegate has appropriate training in, at a minimum:
  - (i) Techniques for each procedure;
  - (ii) Cutaneous medicine;



(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(e) The physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If a physician delegates the performance of a procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, the physician must be on-site during the entire duration of the procedure.

(13) If a physician delegates the performance of a procedure that uses a medication or substance that is approved by the federal Food and Drug Administration for the particular purpose for which it is used, the physician need not be on-site during the procedure, but must be reachable by phone and able to respond within thirty minutes to treat complications.

(14) If the physician is unavailable to supervise a delegate as required by this section, the physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment under the protocols, and must have comparable training as the primary supervising physician.

(15) A physician performing or delegating nonsurgical cosmetic procedures may not sponsor more than three physician assistants at any one time.

(16) A physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-610 Use of drugs or autotransfusion to enhance athletic ability.** (1) A physician shall not prescribe, administer or dispense anabolic steroids, growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), other hormones, or any form of autotransfusion for the purpose of enhancing athletic ability.

(2) A physician shall complete and maintain patient medical records which accurately reflect the prescribing, administering or dispensing of any substance or drug described in this rule or any form of autotransfusion. Patient medical records ~~((shall))~~ must indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered or dispensed and any additional information upon which the diagnosis is based.

(3) A violation of any provision of this rule ~~((shall))~~ constitutes grounds for disciplinary action under RCW 18.130.180(7). A violation of subsection (1) of this section ~~((shall also))~~ constitutes grounds for disciplinary action under RCW 18.130.180(6).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-620 Cooperation with investigation.**

(1) A ~~((licensee))~~ physician must comply with a request, under RCW 70.02.050, for health care records or documents from an investigator who is acting on behalf of the disciplining authority ~~((pursuant to))~~ under RCW 18.130.050(2) ~~((by submitting))~~.

~~((a))~~ The physician shall submit the requested items within ~~((fourteen))~~ twenty-one calendar days of receipt of the request by the ~~((licensee or the licensee's))~~ physician or the physician's attorney, whichever is first. If the ~~((licensee))~~ physician fails to comply with the request within ~~((fourteen))~~ twenty-one calendar days, the investigator shall contact the ~~((licensee or the licensee's))~~ physician or the physician's attorney by letter as a reminder.

~~((b))~~ (b) Investigators may extend the time for response if the ~~((licensee))~~ physician requests an extension for good cause for a period not to exceed ~~((seven))~~ thirty calendar days. Other requests for extension may be granted by the commission chair or the commission's ~~((designee))~~ executive director.

~~((c))~~ (c) If the ~~((licensee))~~ physician fails to comply with the request within three business days after the receipt of the written reminder, a statement of charges ~~((shall))~~ may be issued ~~((pursuant to))~~ under RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, those charges may be included in the statement of charges.

(d) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

(2) A ~~((licensee must))~~ physician shall comply with a request ~~((for))~~ from an investigator who is acting on behalf of the disciplining authority under RCW 18.130.050(2) for information, which may include, but is not limited to:

(a) Nonhealth care records or documents ((from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2) by submitting)) including, but not limited to:

- (i) An explanation of the matter under investigation;
- (ii) Curriculum vitae;
- (iii) Continuing medical education credits;
- (iv) Malpractice action summaries; or
- (v) Hospital affiliations.

(b) The physician shall submit the requested items within ((fourteen)) twenty-one calendar days of receipt of the request by the ((licensee or the licensee's)) physician or the physician's attorney, whichever is first. If the ((licensee)) physician fails to comply with the request within ((fourteen)) twenty-one calendar days, the investigator shall contact the ((licensee)) physician or the licensee's attorney by letter as a reminder.

((a)) (c) Investigators may extend the time for response if the ((licensee)) physician requests an extension for good cause for a period not to exceed ((seven)) thirty calendar days. Other requests for extension may be granted by the commission chair or the commission's ((designee)) executive director.

((b)) (d) If the ((licensee)) physician fails to comply with the request within three business days after the receipt of the written reminder, then a subpoena shall be served upon the ((licensee)) physician to obtain the requested items.

((e)) (e) If the ((licensee)) physician fails to comply with the subpoena, a statement of charges ((shall)) may be issued ((pursuant to)) under RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

((3) A licensee must comply with a request for information from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2). This information may include, but is not limited to, an explanation of the matter under investigation, curriculum vitae, continuing medical education credits, malpractice action summaries, or hospital affiliations. The licensee will submit the requested information within fourteen calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted by the commission chair or the commission's designee.

(b) If the licensee fails to comply with the written reminder within three business days after the receipt of the reminder, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

(4) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the reviewing commission member may take into consideration whether the licensee has complied with the request after the statement of charges has been issued. Any settlement proposal shall be presented to

the commission or a duly constituted panel of the commission for a decision on ratification and until ratified, the settlement is not final.)

(f) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

AMENDATORY SECTION (Amending WSR 16-06-010, filed 2/18/16, effective 3/20/16)

**WAC 246-919-630 Sexual misconduct.** (1) The ((following)) definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) ("Physician" means a person licensed to practice medicine and surgery under chapter 18.71 RCW.

((c)) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, and guardians ((and)) or proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in any of the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date; or
- (k) ((Engaging in a conversation)) Communicating regarding the sexual history, preferences, or fantasies of the physician.

(3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors(;) including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed since the last health care services to the patient;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician;

(f) The nature of the patient's health problem; and

(g) The degree of emotional dependence and vulnerability of the patient.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule (~~shall~~) constitutes grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-700 Mandatory reporting.** ~~((1) All reports required by these regulations shall be submitted to the commission as soon as possible, but not later than sixty days after a determination is made.~~

~~(2) A report should contain the following information if known:~~

~~(a) The name, address and telephone number of the person making the report;~~

~~(b) The name, address and telephone numbers of the physician being reported;~~

~~(c) The case number of any patient whose treatment is a subject of the report;~~

~~(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences;~~

~~(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number; and~~

~~(f) Any further information which would aid the evaluation of the report.~~

~~(3) The mandatory reporting shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept for the confidential use of the commission as provided in the Uniform Disciplinary Act and shall not be subject to subpoena or~~

~~discovery proceedings in any civil action as provided in RCW 4.24.250, and shall be exempt from public disclosure pursuant to chapter 42.17 RCW except for review as provided in RCW 18.71.0195.)~~ The commission adopts the rules for mandatory reporting in chapter 246-16 WAC.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-919-310 Credentialing of physicians and surgeons.

WAC 246-919-710 Mandatory reporting requirement satisfied.

WAC 246-919-730 Medical associations or societies.

WAC 246-919-740 Health care service contractors and disability insurance carriers.

WAC 246-919-750 Courts.

WAC 246-919-760 State and federal agencies.

WAC 246-919-770 Professional standards review organizations.

#### **WSR 20-16-014**

#### **PROPOSED RULES**

#### **HORSE RACING COMMISSION**

[Filed July 23, 2020, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-023.

Title of Rule and Other Identifying Information: WAC 260-49-070 distribution of source market fees.

Hearing Location(s): On September 11, 2020, at 9:30 a.m.

Video conference via Zoom or Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Dependent on gathering limits, method of meeting will be determined at a later date and posted on [www.whrc.wa.gov](http://www.whrc.wa.gov).

Date of Intended Adoption: September 11, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email [doug.moore@whrc.state.wa.us](mailto:doug.moore@whrc.state.wa.us), fax 360-549-6461, by September 4, 2020.

Assistance for Persons with Disabilities: Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email [melanie.bowdish@whrc.state.wa.us](mailto:melanie.bowdish@whrc.state.wa.us), by September 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To stabilize the Washington horse racing commission (WHRC) operating account by increasing the percentage of the source market fee received until other funding is obtained.

Reasons Supporting Proposal: With the COVID-19 pandemic and the closure of Off Track Betting's and Emerald Downs for live in-state wagering from March to June,

WHRC revenue has decreased substantially, while expenses remain consistent. Online wagering thorough [through] the advance deposit wagering firms has increased greatly but WHRC does not receive any revenue from out-of-state residents who wager on Emerald Downs. In order to maintain a fund balance required by office of financial management, WHRC must increase in revenue to protect its ability to remain in operation therefore allowing live racing and simulcasting to continue.

Statutory Authority for Adoption: RCW 67.16.020.

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

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

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

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

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

July 23, 2020  
Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 11-17-056, filed 8/15/11, effective 9/15/11)

**WAC 260-49-070 Distribution of source market fee.**

(1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) Ninety percent of the total source market fee directly to the class 1 racing association and the remaining ten percent directly to the commission.

(b) The class 1 racing association shall ~~((distribute))~~ submit monthly two and one-half percent of the total source market fee to the commission to be deposited into the Washington bred owners' bonus fund ~~((and))~~.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

~~((e))~~ (d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

~~((d) The commission shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account and seven and~~

~~one-half percent of the total source market fee to the commission's operating account.))~~

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

**WSR 20-16-026**

**PROPOSED RULES**

**BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed July 24, 2020, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-092.

Title of Rule and Other Identifying Information: WAC 363-116-0751 Qualifications for pilot applicants.

Hearing Location(s): On September 17, 2020, at 10:00 a.m., at 2901 3rd Avenue, Suite 500, Agate Conference Room, 1st Floor, Seattle, WA 98121. If Washington state agencies are still not allowed to hold public meetings in person in September, instructions will be provided for a virtual public meeting.

Date of Intended Adoption: September 17, 2020.

Submit Written Comments to: Sheri Tonn, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by September 10, 2020.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by September 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board proposes to expand the qualifications for pilot applicants to be more inclusive of sea service that demonstrates the essential qualities necessary for piloting in Washington state, as well as to bring additional clarity to the rules in preparation for the 2021 Marine Pilot Exam. The proposed changes include (1) combined the tug and barge tonnage for the towing category, (2) a separate category, for ship assist to capture inner-harbor tug captains who have a great deal of shiphandling skill, but are operating on tugs under the requirement for tonnage in the existing towing category, (2)[(3)] clarity regarding the pilot category, (3)[(4)] clarification regarding the board's definition of sea service, including ship assist for the new category of vessel, (4)[(5)] clarification regarding what types of vessels are included in the special purpose category, and other minor housekeeping revisions for clarity.

Reasons Supporting Proposal: The board convened a work group, in collaboration with the board's joint diversity committee and maritime professionals with diverse backgrounds to review the existing qualifications and to consider ways to expand them without losing the qualities necessary for safe pilotage. The proposed changes were recommended by the board's trainee evaluation committee and were vetted through Puget Sound pilots and Port of Grays Harbor pilots.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board does not recommend any statutory revisions at this time. If approved, the new rules will be implemented in time for the 2021 Marine Pilot Exam. Currently, there [is] no fiscal impact.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3904.

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

A cost-benefit analysis is required under RCW 34.05-.328. RCW 34.05.328 does not apply to the adoption of these rules. The board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

July 24, 2020  
Jaimie C. Bever  
Executive Director

**AMENDATORY SECTION** (Amending WSR 18-14-024, filed 6/26/18, effective 7/27/18)

**WAC 363-116-0751 Qualifications for pilot applicants.** (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements (~~as master,~~) while holding a minimum license as mate/master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as master
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as master
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as master
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master

Vessel Type	Minimum Size	Waters	Minimum Time
Towing	<del>((150)) 100 GRT or towing/barge combination greater than 1600 GRT or ((300)) 3000 GT (ITC)</del>	Ocean, near coastal or inland	2 years as master
Ship assist	100 GRT or 300 GT (ITC)	Inland	2 years as master or 4 years sailing as a mate/master with a minimum of 1 year as master
Articulated tug barge (ATB)	Combined 10,000 <del>((GRT))</del> GT (ITC)	Ocean or near coastal	4 years sailing as a mate/master with a minimum of 1 year as master
U.S. Flag government	3000 displacement tons	Ocean, near coastal or inland	2 years as commanding officer or master
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
<b>Other</b>			
State-licensed pilot or Navy civil service pilot	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as pilot and 120 vessel moves

<del>((Other</del>	Minimum Size	Waters	Minimum Time
Professional pilot association or government-employed pilot	1600 GRT or 3000 GT (ITC)	Ocean, near-coastal or inland	3 years as pilot)

(b) Sea service is calculated based on days spent onboard a vessel while it is actively engaged in normal operations. "Sea service" does not include time onboard a vessel that is "laid up" or on "standby." In calculating sea service under this subsection (~~((1) of this section~~), a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger/ferry vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(c) Ship assist vessel sea service as mate must be on vessels where the mate is the sole vessel operator and acts independently of the master for twelve hours per day.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) (~~Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting and docking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans,~~

~~near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation with no other responsibilities (either when piloting or not piloting) as a member of the ship's crew.)~~ Two years of service as a state licensed pilot and active member of a professional pilot association or as a naval federal pilot during which periods the pilot applicant was actively engaged in maneuvering, docking and undocking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Special purpose vessels may include fishing vessels, fishing processors, research vessels, offshore supply vessels, dredge vessels, and cable vessels. Special purpose vessels do not include drill ships. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection ~~((2))~~. The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing ~~((of vessels or in ship assist work))~~.

(e) Ship assist vessels shall refer to vessels primarily engaged in assisting ships dock, undock, and maneuver.

~~((e))~~ (f) GRT shall refer to gross register tonnage (domestic).

~~((f))~~ (g) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the 1969 *International Convention on Tonnage Measurement of Ships*.

~~((g))~~ (h) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

~~((h))~~ (i) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether he/she qualifies to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, he/she will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

## WSR 20-16-028

### PROPOSED RULES

### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed July 25, 2020, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-010.

Title of Rule and Other Identifying Information: WAC 181-78A-236, this WAC adds clinical practice minimum hour requirements for career and technical education (CTE) B&I teacher and administrator programs.

Hearing Location(s): On September 24, 2020, at 8 a.m., at the Ruby River Hotel, 700 North Division Street, Spokane, WA 99202.

Date of Intended Adoption: September 24, 2020.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by September 10, 2020.

Assistance for Persons with Disabilities: PESB, phone 360-725-6275, email pesb@k12.wa.us, by September 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adds a minimum number of clinical practice hours for CTE administrator and CTE B&I teacher preparation programs.

Reasons Supporting Proposal: All program types, except these, have had a minimum number of hours. Following the

work group's recommendations, the board voted to initially approve an hour requirement.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

July 23, 2020  
Maren Johnson  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

**WAC 181-78A-236 Teacher, principal, career and technical education program director, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice.**

Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement per WAC 181-78A-125 and 181-78A-300.

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification must consist of no less than four hundred fifty hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than five hundred forty hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least five hundred forty hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant

to the standards identified in WAC 181-78A-220 and 181-78A-232 and meets, at minimum, the standards-based benchmarks approved and published by the board.

(d) Superintendent candidates must complete an internship of at least three hundred sixty hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least four hundred fifty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least sixty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220, 181-78A-232, and 181-78A-300 to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including on-site visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences and related assessment requirements in accordance with WAC 181-78A-300 and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

(c) Ensure that teacher candidates have completed knowledge and skills assessments requirements in accor-

dance with this section and WAC 181-78A-300(2) prior to beginning student teaching.

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

**WSR 20-16-029**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed July 25, 2020, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-027.

Title of Rule and Other Identifying Information: WAC 181-78A-205 Required professional education advisory board and 181-78A-209 Professional education advisory boards—Membership.

Hearing Location(s): On September 24, 2020, at 8:00 a.m., at the Ruby River Hotel, 700 North Division Street, Spokane, WA 99202.

Date of Intended Adoption: September 24, 2020.

Submit Written Comments to: Professional Educator Standards Board (PESB), 600 Washington Street S.E., P.O. Box 47236, Olympia, WA 98504-7236, email pesb@k12.wa.us, by September 10, 2020.

Assistance for Persons with Disabilities: PESB, phone 360-725-6275, email pesb@k12.wa.us, by September 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Include career and technical education (CTE) B&I and CTE administrator programs in WAC on professional education advisory board.

Reasons Supporting Proposal: All program types, except these, have clear requirements for membership on professional education advisor boards.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, 600 Washington Street S.E., P.O. Box 47236, Olympia, WA 98504-7236, 360-725-6264; Imple-

mentation and Enforcement: PESB, 600 Washington Street S.E., P.O. Box 47236, Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

July 23, 2020

Maren Johnson  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-028, filed 12/28/11, effective 1/28/12)

**WAC 181-78A-205 Required professional education advisory board.** Institutions and organizations seeking approval by the professional educator standards board as an approved preparation program, and in order to maintain such approval status, shall establish a professional education advisory board (PEAB) in accordance with the following:

(1) The program areas for which an institution or organization may seek approval and maintain an approved preparation program are:

(a) Teacher.

(b) Career and technical education business and industry route teacher.

(c) Administrator.

~~((e))~~ (d) Career and technical education business and industry route administrator.

(e) Educational staff associate (ESA), school counselor.

~~((f))~~ (f) Educational staff associate, school psychologist.

(2) An institution or organization may combine educational staff associate professional education advisory boards as long as one-half or more of the voting members are appointed by the associations representing the ESA roles involved and are divided equally among those roles.

(3) An institution or organization may have separate administrator professional education advisory boards for each administrator role as long as one-half or more of the voting members are appointed by the association representing the administrator role involved: ~~((Provided, That))~~ Each administrator PEAB shall include at least one member appointed by the Association of Washington School Principals (AWSP), one appointed by the Washington Association of School Administrators (WASA), and one appointed by the Washington Federation of Independent Schools (WFIS).

(4) The failure of a designated organization, as specified in WAC 181-78A-209, to make appointments to the designated board, or to make such appointments in a timely manner, shall not cause the preparation program to lose its approval status.



AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

**WAC 181-78A-207 Qualification to be appointed to an institution or organization professional education advisory board.** (1) Professional education advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional education advisory board consist of representatives who meet the qualifications of this subsection and who are from the role for which the professional education advisory board has responsibility.

(2) If any professional education advisory board receives a written request from other school districts or other public or private agencies for representation on such professional education advisory board, the current members of such professional education advisory board shall vote on such request at the next regular meeting of such board (~~(-Provided, That)~~). A program may elect to add private school representatives to a professional education advisory board without adding to the representation from the role for which the professional education advisory board has responsibility if the professional education advisory board authorizes such action by a majority vote.

AMENDATORY SECTION (Amending WSR 12-02-028, filed 12/28/11, effective 1/28/12)

**WAC 181-78A-209 Professional education advisory boards—Membership.** The professional education advisory boards shall at a minimum consist of the following:

(1) **TEACHER.**

(a) One-half or more of the voting members (~~(shall be)~~) are classroom teachers. All, but one, (~~(will)~~) must be appointed by the president of the Washington Education Association. The remaining teacher (~~(shall)~~) must be employed in a state-approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one principal appointed by the president of the Association of Washington School Principals.

(c) At least one school administrator appointed by the Washington Association of School Administrators.

(d) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist) appointed by the president of the individual's professional association.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(f) At programs where career and technical education programs are offered in conjunction with general educator residency certification programs, one career and technical education director or career and technical education teacher, with expertise in one of the approved career and technical education programs at the institution or organization, appointed by the Washington Association of (~~(Vocational)~~) Career and Technical Administrators in cooperation with the institution or organization.

(2) **CAREER AND TECHNICAL EDUCATION BUSINESS AND INDUSTRY ROUTE TEACHER.**

(a) One-half or more of the voting members are career and technical education teachers. One-half of these teachers must be appointed by the executive director of the Washington Association for Career and Technical Education. The remaining teachers must be appointed by the educator preparation program. At least one career and technical education teacher on the advisory board must be prepared through a Washington state business and industry route preparation program.

(b) At least one career and technical education director appointed by the president of the Washington Association for Career and Technical Administrators.

(c) At least one secondary school administrator appointed by the Washington Association of Career and Technical Administrators' area group associated with the educator preparation program.

(d) At least one career and technical education career guidance specialist, or one career and technical education occupational information specialist, or one career and technical education counselor.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

(3) **ADMINISTRATOR.**

(a) One-half or more of the voting members (~~(shall be)~~) are administrators. One-half of these administrators (~~(shall)~~) must be appointed by the president of the Washington Association of School Administrators. The remaining administrators shall be appointed by the president of the Association of Washington School Principals except one who shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more classroom teachers appointed by the president of the Washington Education Association.

(c) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist) appointed by the president of the individual's professional association.

(d) At least one institution or organization representative who may serve in a voting or nonvoting role.

(~~(3))~~ (4) **CTE ADMINISTRATOR.**

(a) One-half or more of the voting members are certificated career and technical education administrators. One-half of these administrators must be appointed by the Washington Association of Career and Technical Administrators' area group associated with the educator preparation program. The remaining administrators must be appointed by the educator preparation program.

(b) At least one or more career and technical education teacher appointed by the executive director of the Washington Association for Career and Technical Education.

(c) At least one secondary school administrator appointed by the Washington Association of Career and Technical Administrators' area group associated with the program.

(d) At least one career and technical education career guidance specialist, or one career and technical education

occupational information specialist, or one career and technical education counselor appointed by the educator preparation program.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

**(5) SCHOOL COUNSELOR.**

(a) At least one-half of the voting members (~~(shall be)~~) are school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

~~((4))~~ **(6) SCHOOL PSYCHOLOGIST.**

(a) At least one-half of the voting members (~~(shall be)~~) are school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one institution or organization representative who may serve in a voting or nonvoting role.

~~((5))~~ **(7) MEMBERSHIP APPOINTMENTS.** Applicable to all professional association appointments, if the professional association does not respond to the program's request for an appointment of a representative within sixty days of the receipt of the request, a program may appoint the representative of its choice in the role for which an appointment is being sought. If the program makes an appointment, it must notify the appropriate professional association within one week that the appointment has been made. If an association is unable to appoint a representative due to the geographic restriction of possible candidates, the PEAB will appoint an alternate to represent that association with their consent.

**WSR 20-16-085  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 30, 2020, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-064.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

Hearing Location(s): On September 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health

Services (DSHS), Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than September 9, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 8, 2020.

Assistance for Persons with Disabilities: Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by August 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will align rule language with state law regarding restrictions on electronic benefit transfer (EBT) cards per RCW 74.08.580. Rule language will reflect allowable use of EBT cards at specialty beer and liquor stores that are authorized SNAP retailers. Amendments also align with state law prohibiting use of EBT cards in tattoo, body piercing, and body art shops.

Reasons Supporting Proposal: These amendments are necessary to align rule language with existing state law and recently revised statute under SB 6136 (chapter 64, Laws of 2020).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090; 7 C.F.R. §§ 271.2, 273.16.

Statute Being Implemented: Chapter 64, Laws of 2020.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Christina M. Barras, P.O. Box 45470, Olympia, WA 98504-5770, 360-725-4640.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

July 28, 2020

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-03-054, filed 1/10/19, effective 2/10/19)

**WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?** (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment or school related items; and
- (ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
  - (A) The purchase of lottery tickets;
  - (B) The purchase of pull tabs;
  - (C) Use of punch boards;
  - (D) Purchase of bingo cards;
  - (E) Betting on horse racing;
  - (F) Participating in casino games; and
  - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iv) Purchase any ~~((alcoholic))~~ items regulated under Title 66 RCW;

(v) Purchase or participate in any activities in any of the following locations:

- (A) Taverns licensed under RCW 66.24.330;
- (B) Beer/wine specialty stores licensed under RCW 66.24.371, except if the store is an authorized supplemental nutrition assistance program or women, infants, and children retailer;
- (C) Nightclubs licensed under RCW 66.24.600;
- (D) ~~((Contract liquor stores defined under RCW 66.04.010;~~

~~(E))~~ Bail bond agencies regulated under chapter 18.185 RCW;

~~((F))~~ (E) Gambling establishments licensed under chapter 9.46 RCW;

(F) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

(i) Breads and cereals;

(ii) Fruits and vegetables;

(iii) Cheese, milk, and other dairy products;

(iv) Meats, fish, poultry, and eggs;

(v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits for any purpose other than to buy food for eligible household members.

(iii) Exchange food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

**WSR 20-16-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed July 30, 2020, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-090.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?

Hearing Location(s): On September 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than September 9, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 8, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by August 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2020 supplemental operating budget provides for elimination of the mid-certification review (MCR) requirement for aged, blind, or disabled (ABD) program recipients who are age sixty-five or older. This change eliminates a barrier to ongoing ABD program benefits for the aged population. MCRs for this population are no longer required, effective July 1, 2020, as reflected in emergency amendments filed under WSR 20-14-085.

Reasons Supporting Proposal: These changes implement requirements of the 2020 supplemental operating budget.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Daisha Gomillion, P.O. Box 45470, Olympia, WA 98504-5770, 360-725-4781.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

July 30, 2020  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-09-034, filed 4/11/13, effective 6/1/13)

**WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?** (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; ~~((or))~~

(ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060 and are age sixty-five or older; or

(iii) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for Basic food if:

- (i) Your assistance unit has a certification period of six months or less; or
- (ii) All adults in your assistance unit are elderly or disabled and have no earned income.

**(3) When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as Basic Food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Complete the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;
- (iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and
- (v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;
- (ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and
- (iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

**WSR 20-16-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Long-Term Support Administration)  
 [Filed July 30, 2020, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-10-051.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0010 What definitions apply to this chapter?, 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?, 388-106-0075 How is my need for personal care services assessed in CARE?, 388-106-0090 How does the CARE tool measure cognitive performance?, 388-106-0095 How does the CARE tool measure clinical complexity?, 388-106-0100 How does the CARE tool measure mood and behaviors?, and 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): On September 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held

via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than September 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has been working to modernize the comprehensive assessment and reporting evaluation (CARE) assessment tool and is amending these rules to be consistent with updates that have been made to the CARE tool.

There have been no changes that affect how the department determines eligibility or benefit level using the CARE tool.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachele Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2353.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii), rules of DSHS relating only to client medical or financial eligibility.

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

Is exempt under RCW 19.85.025(4), because the rules do not affect small businesses.

Explanation of exemptions: The rules affect services to clients based on the client's ability to perform certain tasks.

July 29, 2020

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-17 issue of the Register.

**WSR 20-16-100**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed July 31, 2020, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-097 on June 17, 2020.

Title of Rule and Other Identifying Information: The department is proposing to broaden the scope of chapter 220-111 WAC to encompass agency rule-making activities and revise the title from "Emergency rules" to "Rule-making" accordingly. The department is also proposing new rules to govern the management of its rule-making files, which would be created in chapter 220-111 WAC as follows: WAC 220-111-001 Rule-making files—Generally, 220-111-002 Agency rules coordinator, 220-111-003 Rule-making files available, and 220-111-004 Requests to inspect rule-making files.

Hearing Location(s): On September 8, 2020, at 9:00 a.m.

Online webinar. This hearing will take place by webinar. The public may participate in the meeting. Visit our website at <https://wdfw.wa.gov/about/regulations/development#pending> or contact the rules coordinator at Rules.Coordinator@dfw.wa.gov for instructions on how to register for the meeting.

Date of Intended Adoption: September 8, 2020.

Submit Written Comments to: Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, email Rules.Coordinator@dfw.wa.gov, <https://wdfw.wa.gov/about/regulations>, by September 2, 2020.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by September 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed modification to chapter 220-111 WAC is to broaden the chapter to encompass agency rules to govern rule-making activities beyond emergency rules.

The purpose of the proposed new rules is to identify a point of contact for the department's rule-making files and clarify the department's procedures relative to requests for public access to its rule-making files.

Reasons Supporting Proposal: New rules are necessary to clarify the department's implementation of chapter 34.05 RCW, the Administrative Procedure Act.

The intent of these proposed actions is to facilitate public transparency in the administrative decision-making process and specify a procedure by which the department would provide public access to agency rule-making files.

Statutory Authority for Adoption: RCW 43.17.060, 34.05.220, and 77.04.080.

Statute Being Implemented: RCW 34.05.220, 34.05.312, 34.05.370, 43.17.060, and 77.04.080.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Michele Culver, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2196; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

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

Is exempt under RCW 19.85.025(4). This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

Explanation of exemptions: These rules provide a point of contact for the department's rule-making files and clarify the department's procedures relative to requests from individual members of the public to access its rule-making files. There are no costs to comply with these rules, and therefore, this rule does not affect small businesses.

July 31, 2020  
Michele K. Culver  
Rules Coordinator

## Chapter 220-111 WAC

### ~~((EMERGENCY RULES))~~ RULE-MAKING

#### NEW SECTION

##### **WAC 220-111-001 Rule-making files—Generally.**

The purpose of this chapter is to specify criteria for the director to close or shorten seasons pursuant to RCW 77.12.150, and to provide procedures governing the department's maintenance of, and the public's request to inspect, rule-making files of the department pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

#### NEW SECTION

##### **WAC 220-111-002 Agency rules coordinator.** (1) The department's rules coordinator:

- (a) Has knowledge of the subjects of rules being proposed or prepared within the agency for proposal;
- (b) Maintains the records of any such action;
- (c) Maintains the department's rule-making docket;
- (d) Responds to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them; and
- (e) Oversees the department's compliance with the Administrative Procedure Act requirements concerning locating, processing, and making department rule-making files available for public inspection.

(2) The department's rules coordinator can be contacted at:

Agency Rules Coordinator  
Department of Fish and Wildlife

Office Location:  
Natural Resources Building, 5th Floor  
1111 Washington Street S.E.  
Olympia, WA 98501-1091

Mailing Address:  
P.O. Box 43200

Olympia, WA 98504-3200  
email address: Rules.Coordinator@dfw.wa.gov

Current contact information is also available at the department's website at <http://wdfw.wa.gov>.

(3) The department's rules coordinator may designate one or more department staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process requests to inspect rule-making files. Therefore, use of the term "department rules coordinator" in this chapter may include the department rules coordinator's designee(s) and/or any other staff assisting in processing requests to inspect rule-making files, where indicated by context.

#### NEW SECTION

##### **WAC 220-111-003 Rule-making files available.** (1)

The department's rule-making docket and many of its rule-making files are publicly available on the department's website at <http://wdfw.wa.gov>. Requestors are encouraged to search for and view department rule-making activities on the department's website in lieu of or prior to submitting a request to inspect the department's rule-making files.

(2) Rule-making files are available for inspection, upon request, from 9:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Based on other demands on the agency and/or the size, format, and location of the rule-making file, the department rules coordinator may specify the date and times during which particular rule-making files will be made available for inspection.

(3) Requestors providing a valid email address may be able to view rule-making files on their own computers, or rule-making files may be inspected at the department's central office, located at 1111 Washington Street S.E., Olympia, Washington 98501.

(4) Requestors should contact the department's rules coordinator to determine the availability of records for inspection. The department will ordinarily respond to such requests within three days.

#### NEW SECTION

##### **WAC 220-111-004 Requests to inspect rule-making files.** (1) Any person wishing to inspect rule-making files of the department must contact the agency rules coordinator by letter or email to the office or email address set forth in WAC 220-111-002(2). The written request must be addressed and sent to the department's rules coordinator and include the following information:

- (a) Name of the requestor;
- (b) Contact information, including telephone number and email address, if the requestor has one; and
- (c) Identification of the rule-making files sought, in a form or description that is sufficient for the department's rules coordinator to identify and locate the requested file. If a request for inspection of a rule-making file is unclear, the rules coordinator may request clarification.

(2) If the requestor wishes to have copies of the records made, whether hard copy or electronic, instead of inspecting them, the requestor must submit a request for public records

pursuant to the Public Records Act, chapters 42.56 RCW and 220-120 WAC. A public records request form is available to requestors at the office of the public records officer and at the department's website at <http://wdfw.wa.gov>.

**WSR 20-16-113**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed July 31, 2020, 1:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-115.

Title of Rule and Other Identifying Information: Permanent adoption of WAC changes related to operation of student voting HUBs on campuses and the associated grant program.

Hearing Location(s): On September 9, 2020, at 11 a.m., at 520 Union Avenue, Olympia, 98504.

The hearing will be conducted using WebEX, to join the hearing a person can call the following telephone number (408-418-9388) and enter the attendance code (146 563 9263). People will be able to hear and comment.

Date of Intended Adoption: September 10, 2020.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email [sheryl.moss@sos.wa.gov](mailto:sheryl.moss@sos.wa.gov), fax 360-664-4619, by September 8, 2020.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4146, fax 360-664-4619, email [Sheryl.moss@sos.wa.gov](mailto:Sheryl.moss@sos.wa.gov), by September 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation.

Reasons Supporting Proposal: To provide a framework for operation of student voting HUBs within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: Section 10, chapter 208, Laws of 2020 (ESB 6313), not yet codified.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4180.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

July 31, 2020

Mark Neary

Assistant Secretary of State

NEW SECTION

**WAC 434-250-350 Student engagement hubs.** Pursuant to chapter 29A.40 RCW, section 10, chapter 208, Laws of 2020 (ESB 6313), the county auditor and any educational institution within the county that are statutorily required to host a hub must enter a contract to operate a student engagement hub.

(1) For all institutions operating student engagement hubs, the contract must include:

(a) A method for voters to download and print the voter's ballot for the exact precinct and precinct split from the voter's county of registration from an online portal;

(b) Provisions for protecting the privacy and secrecy of any voted ballot;

(c) Provision of instruction for voters on how to return a ballot;

(d) Provision of services to those in line at 8:00 p.m. on election day to obtain a ballot, vote, and deposit their voted ballot;

(e) Provision of a secured ballot drop box at the hub, following current ballot drop box procedures for emptying the contents and closing the box at the conclusion of hub operations;

(f) Ensuring that when a voter is in line at the hub at 8:00 p.m. or earlier on election day, their ballot may be deposited in the drop box after 8:00 p.m., but no other voters can use the drop box after 8:00 p.m.

(g) Ensuring operation of the hub in a nonpartisan manner while allowing no campaign materials or campaigning within a minimum of at least twenty-five feet of the entrances and exits of the hub facility, or within the hub;

(h) Provision of accessible facilities compliant with the Americans with Disabilities Act.

(2) For institutions operating student engagement hubs that are statutorily required to include voter registration services, the contract must also include:

(a) An agreed upon method of voter registration services for all eligible citizens at the hub;

(b) Setting the hours of operation as the county auditor's normal working hours and, on Election Day, starting at normal business opening and extended until 8:00 p.m.;

(c) An agreement detailing the days that the hub will be in operation up to the statutory maximum of eight days prior to the election;

(d) Provision to the hub of at least the following services by agreement between the county auditor and the university or college:

(i) Staffing;

(ii) Availability of provisional ballots;

(iii) Provision of notice of the availability of services;

(iv) Provision of appropriate voter information including voter pamphlets; and

(v) Provision of services to those in line at 8:00 p.m. on election day to register to vote, obtain a ballot, vote, and deposit their voted ballot.

(3) The prohibitions listed in chapter 29A.84 RCW for voting centers and ballot drop boxes also apply to student engagement hubs.

(4) Hub staff may provide postage stamps for voters that choose to mail their ballot.



NEW SECTION

**WAC 434-250-360 Hub grant program.** (1) Each year that funding has been made available by the legislature, a county that is required to operate a student engagement hub under chapter 29A.40 RCW, section 10, chapter 208, Laws of 2020 (ESB 6313), may request grant funding from the secretary of state for the operation of a student engagement hub during any portion of the in-person voter registration period associated with each general election.

(a) Funding may be provided only after completion of a grant agreement between the county auditor and secretary of state pursuant to section 23, chapter 208, Laws of 2020.

(b) Funding may be provided for the purposes of obtaining equipment necessary for hub operation that will become the property of the county auditor for use in conducting elections.

(c) Funding may be provided for the purposes of obtaining hardware and software necessary for compliance with WAC 434-250-350 (2)(d).

(d) Funding may be provided for operational costs of the hub for staffing, materials, rent, information technology needs related to security and connectivity, and other costs agreed upon between the county auditor and the university or college for operation.

(e) Funding may be provided to county auditors to pay staffing costs at the auditor's office to accommodate operation of the hub during hub hours.

(f) Funding may be provided to county auditors for preparation, planning and training required to coordinate hub operation.

(g) Funding will be prorated based on the number of students enrolled on campus at the university or college, and the number of days of operation of each hub.

(h) Funding may be provided to the county auditor for the associated student organization of the university or college up to a maximum of three thousand dollars per hub for assistance in operation and promotion of the hub availability on campus.

(i) Funding may be provided on a case by case basis for additional requirements identified by the county auditor in a grant application.

(2) The application for grant funding to operate a hub must:

(a) Provide a detailed description of hub operations, hours, and intended expenditures to the secretary of state for review;

(b) Be accompanied by the signed agreement between the county auditor and the university or college pursuant to WAC 434-250-350;

(c) Be accompanied by any other grant funding requests pursuant to subsection (1) of this section;

(d) The grant application deadline is the third Monday in September.

(3) The Washington state director of elections will review each application and request additional documentation where necessary.

(a) Once the application and plan has been reviewed, the grant may be funded in full or in part at the sole discretion of the director of elections or designee.

(b) Grant amounts will vary based on the number of students enrolled on the university or college campus, the number of days of hub operation, and available funding.

(4) After each general election, any funds granted to a county that were not expended shall be returned to the secretary of state.

**WSR 20-16-114****PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed July 31, 2020, 2:15 p.m.]

Continuance of WSR 20-07-122.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-282-990(4), sanitary control of shellfish fees, annual paralytic shellfish poisoning (PSP) testing fee redistribution.

Hearing Location(s): On September 8, 2020, at 3:00 p.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Please register for the public hearing for WAC 246-282-990(4), geoduck PSP testing fee redistribution on September 8, 2020, 3:00 p.m. PDT at <https://attendee.gotowebinar.com/register/1398523124051843855>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: September 16, 2020.

Submit Written Comments to: Peter Beaton, Washington State Department of Health, Division of Environmental Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by September 8, 2020.

Assistance for Persons with Disabilities: Contact Peter Beaton, phone 360-236-4031, TTY 711, email [Peter.Beaaton@doh.wa.gov](mailto:Peter.Beaaton@doh.wa.gov), by September 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to the coronavirus disease (COVID-19) pandemic DOH will not be holding an in-person hearing at a physical location. The department is changing the hearing date and time and will hold the hearing as a virtual hearing.

Statutory Authority for Adoption: RCW 43.70.250, 43.20B.020.

Statute Being Implemented: RCW 43.70.250, 43.20B.-020.

July 31, 2020

Lauren Jenks

Assistant Secretary

AMENDATORY SECTION (Amending WSR 19-10-026, filed 4/23/19, effective 5/24/19)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	≤ 2	\$752
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$882
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1st of each year for companies licensed as harvesters; or

(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
Department of Natural Resources	NA	<del>\$(11,268)</del> <u>10,584</u>
Jamestown S'Klallam Tribe	WA-0588-SS	<del>\$(1,662)</del> <u>2,964</u>
Lower Elwha Klallam Tribe	WA-0587-HA	<del>\$(2,217)</del> <u>3,810</u>
Lummi Indian Business Council	WA-0098-SS	<del>\$(185)</del> <u>635</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	<del>\$(3,140)</del> <u>2,540</u>
Puyallup Tribe of Indians	WA-1137-HA	<del>\$(10,898)</del> <u>9,949</u>
<u>Skokomish Indian Tribe</u>	<u>WA-0577-HA</u>	<u>\$1,270</u>
Suquamish Tribe	WA-0694-SS	<del>\$(20,318)</del> <u>13,971</u>
Swinomish Indian Tribal Community	WA-1420-SS	<del>\$(1,108)</del> <u>423</u>
<u>Taylor Shellfish Company, Inc.</u>	<u>WA-0046-SP</u>	<u>\$7,409</u>
The Tulalip Tribes	WA-0997-HA	<del>\$(3,510)</del> <u>4,445</u>
<del>((Taylor Shellfish Company, Inc.</del>	<del>WA-0046-SP</del>	<del>\$3,694)</del>

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 20-16-130**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed August 3, 2020, 12:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-070.

**Title of Rule and Other Identifying Information:** The department proposes repeal of WAC 388-478-0010 Households with obligations to pay shelter costs, and amendments to WAC 388-418-0020 How does the department determine the date a change affects my cash and basic food benefits?, 388-478-0005 Cash assistance need and payment standards and grant maximum, 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance, 388-478-0015 Need standards for cash assistance, 388-478-0020 Payment standards for TANF, SFA, and RCA, 388-478-0027 What are the payment standards for pregnant women assistance (PWA)?, 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?, and 388-478-0090 What are the monthly income limits for the aged, blind, and disabled (ABD) cash assistance and housing and essential needs (HEN) referral program?

**Hearing Location(s):** On September 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>.

**Date of Intended Adoption:** Not earlier than September 9, 2020.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., September 8, 2020.

**Assistance for Persons with Disabilities:** Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by August 25, 2020.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Proposed amendments will remove references to a separate standard for households with shelter provided at no cost. With this change, the department will no longer issue reduced grants based on a supplied shelter standard for recipients with no shelter costs.

**Reasons Supporting Proposal:** The proposed language supports implementation of policy changes as provided in the 2020 supplemental operating budget (ESSB 6168, chapter 357, Laws of 2020).

**Statutory Authority for Adoption:** RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030.

**Statute Being Implemented:** None.

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

**Name of Proponent:** DSHS, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement:** Kathryn Gussett, P.O. Box 45470, Olympia, WA 98504-5770, 509-290-8435.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small business. They only impact DSHS clients.

July 31, 2020

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-07-064, filed 3/15/18, effective 4/15/18)

**WAC 388-418-0020 How does the department determine the date a change affects my cash and basic food benefits?** (1) The rules in this chapter refer to cash and basic food benefits unless otherwise specified.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For cash and basic food programs, if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change.

(5) Changes reported outside of normal business hours, including changes you submitted online, in person, or sent to us by fax, are considered received the next business day.

(6) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(7) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a mid-

certification review, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change; and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(8) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(9) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the notice period as described in WAC 388-458-0040, we wait to take action on the change.

(10) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(11) When you request a hearing and receive continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For basic food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing; or

(v) You abandon your fair hearing request;

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(12) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) ~~(When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.~~

~~(e))~~ When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

**WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.** (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC ~~((482-513-1300 and 182-515-1500))~~ 388-478-0006).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on ~~((their obligation to pay for shelter))~~ program grant standards.

~~((a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.~~

~~(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.~~

~~(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.)~~

(4) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed the payment standard for a family of eight listed in WAC 388-478-0020(1).

AMENDATORY SECTION (Amending WSR 15-12-021, filed 5/22/15, effective 7/1/15)

**WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance.** Payment standards for assistance units (AU) in certain facilities and medical institutions are based on the need for clothing, personal maintenance, and necessary incidentals (CPI).

(1) The CPI cash assistance payment standard for recipients of cash assistance is:

(a) Forty-one dollars and sixty-two cents for eligible persons in medical institutions as defined in WAC 182-500-0050; or

(b) Thirty-eight dollars and eighty-four cents for eligible persons in one of the following facilities as defined in WAC 182-513-1100:

(i) Adult residential care (ARC) facility;

(ii) Adult residential rehabilitation centers (ARRC);

(iii) Adult residential treatment facility (ARTF);

(iv) Enhanced adult residential care facility (EARC); or

(v) Developmental disability administration (DDA) group home facilities.

(2) When living situation is other than the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100 refer to ((WAC 388-478-0010 when living situation is other than the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100)) the following:

(a) WAC 388-478-0020 for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA):

(b) WAC 388-478-0027 for pregnant women assistance (PWA); or

(c) WAC 388-478-0033 for aged, blind, or disabled (ABD).

AMENDATORY SECTION (Amending WSR 19-24-032, filed 11/25/19, effective 1/1/20)

**WAC 388-478-0015 Need standards for cash assistance.** The monthly need and payment standards for cash assistance are based on a determination of the assistance unit size. The need standards for cash assistance units are:

(1) ((For assistance units with an obligation to pay shelter costs)) Effective January 1, 2020:

Assistance unit size	Need standard
1	\$1,520
2	1,923
3	2,374
4	2,801
5	3,229
6	3,656
7	4,226
8	4,677
9	5,128
10 or more	5,579

(2) ((For assistance units with shelter provided at no cost)) Effective January 1, 2021:

Assistance unit size	Need standard
1	<del>(\$695)</del> <u>\$1,538</u>
2	<del>((880))</del> <u>1,946</u>
3	<del>((1,086))</del> <u>2,402</u>
4	<del>((1,281))</del> <u>2,834</u>
5	<del>((1,477))</del> <u>3,267</u>
6	<del>((1,672))</del> <u>3,699</u>
7	<del>((1,933))</del> <u>4,276</u>
8	<del>((2,139))</del> <u>4,732</u>
9	<del>((2,346))</del> <u>5,188</u>
10 or more	<del>((2,552))</del> <u>5,645</u>

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

**WAC 388-478-0020 Payment standards for TANF, SFA, and RCA.** ((+)) The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units ((with obligations to pay shelter costs)) are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	\$363	6	\$877
2	459	7	1,013
3	569	8	1,121
4	670	9	1,231
5	772	10 or more	1,338

((2) The maximum monthly payment standards for TANF, SFA, and RCA assistance units with shelter provided at no cost are:))

<u>((Assistance unit size))</u>	<u>((Payment standard))</u>	<u>((Assistance unit size))</u>	<u>((Payment standard))</u>
<u>((1))</u>	<u>((221))</u>	<u>((6))</u>	<u>((532))</u>
<u>((2))</u>	<u>((280))</u>	<u>((7))</u>	<u>((616))</u>
<u>((3))</u>	<u>((345))</u>	<u>((8))</u>	<u>((681))</u>
<u>((4))</u>	<u>((408))</u>	<u>((9))</u>	<u>((749))</u>
<u>((5))</u>	<u>((469))</u>	<u>((10 or more))</u>	<u>((813))</u>

AMENDATORY SECTION (Amending WSR 19-21-056, filed 10/11/19, effective 11/11/19)

**WAC 388-478-0027 What ((are)) is the payment ((standards)) standard for pregnant women assistance (PWA)?** ((+)) The payment ((standards)) standard for a PWA cash assistance ((units with obligations to pay shelter costs are)) unit is:

Assistance Unit Size	Payment Standard
1	\$363

((2) The payment standards for PWA cash assistance units with shelter provided at no cost are:))

<u>((Assistance Unit Size))</u>	<u>((Payment Standard))</u>
<u>((1))</u>	<u>((221))</u>

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?** ((+)) The payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units ((with obligations to pay shelter costs)) are:

Assistance Unit Size	Payment standard
1	\$197
2	\$248

~~((2))~~ The payment standards for aged, blind, or disabled (ABD) cash assistance units with shelter provided at no cost are:))

<del>((Assistance Unit Size))</del>	<del>((Payment Standard))</del>
<del>((1))</del>	<del>((120))</del>
<del>((2))</del>	<del>((152))</del>

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

**WAC 388-478-0090** What are the monthly income limits for the aged, blind, or disabled (ABD) cash assistance and housing and essential needs (HEN) referral program? You must have countable income, as defined in WAC 388-450-0162, at or below the monthly income limit in order to receive aged, blind, or disabled (ABD) cash assistance or a referral to the housing and essential needs (HEN) program.

(1) The ABD cash assistance and HEN referral monthly income limits for individuals ~~((with an obligation to pay shelter costs))~~ are:

Assistance Unit Size	Monthly Income Limit
1	\$339
2	\$428

~~(2) ((The ABD cash assistance and HEN referral monthly income limits for individuals with shelter provided at no cost are:))~~

<del>((Assistance Unit Size))</del>	<del>((Monthly Income Limit))</del>
<del>((1))</del>	<del>((206))</del>
<del>((2))</del>	<del>((261))</del>

~~((3))~~ The ABD cash assistance and HEN referral monthly income limits for individuals in medical institutions and group living facilities are:

Facility Type	Assistance Unit Size	Monthly Income Limit
Medical institutions (including nursing homes and hospitals)	1	\$41.62
Adult family homes	1	\$339.00
Boarding homes (including assisted living, enhanced residential centers (EARC), and adult residential centers (ARC))	1	\$38.84

Facility Type	Assistance Unit Size	Monthly Income Limit
Developmental disability administration (DDA) group homes	1	\$38.84
Mental health adult residential treatment facilities (ARTF)	1	\$38.84

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-478-0010 Households with obligations to pay shelter costs.

**WSR 20-16-137**

**PROPOSED RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed August 3, 2020, 3:27 p.m.]

Continuance of WSR 20-08-034.

Preproposal statement of inquiry was filed as WSR 19-18-021.

Title of Rule and Other Identifying Information: Hours of availability and suitable work: Adjusting the hours unemployment claimants must be available for work in order to be eligible for unemployment benefits and updating factors used to determine suitable work. In light of COVID-19, we are extending the comment period and offering a second opportunity for verbal comments.

Hearing Location(s): On September 9, 2020, at 10:00 a.m.

Telephone conference, call 360-407-3790. When prompted for the Conference ID number, press 51750 and then the # key. Hearing is being held remotely due to the COVID-19 pandemic.

Date of Intended Adoption: September 25, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by September 9, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov [teckstein@esd.wa.gov], by September 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under current rules, unemployment claimants must be available for work during all the usual hours and days of the week customary for their occupation. This requirement can be unobtainable for some claimants who work in 24/7 professions, especially those claimants who have family caregiving responsibilities. Rule making is necessary to set a more obtainable standard.

Additionally, rule making is necessary to include shifts of employment as a factor used to determine suitable work,

consistent with Unemployment Insurance Program Letter No. 41-98.

**Reasons Supporting Proposal:** Current availability requirements force many Washington workers to make difficult choices between providing care necessary for family members and being available for work during unattainable days and hours. Approximately forty percent of industries in Washington are classified as having customary hours of twenty-four hours a day, seven days a week. This forces claimants to be available morning, afternoons, and overnight, even if the claimant had not previously worked shifts during those time frames. Many claimants are unable to accept work different from previous work schedules due to obligations for providing care for a child or vulnerable adult, which precludes the claimant from receiving unemployment insurance (UI) benefits. By removing the requirement that claimants be available for "all of" the customary hours of the industry, claimants are provided flexibility to receive UI benefits while the claimant searches for new suitable employment while meeting obligations for providing care to family members.

Clarifying the definition of suitable work to include previous shifts of employment provides a level of protection for workers. The amended definition of suitable work removes hardships on claimants while protecting charged employers by preventing claimants from imposing undue restrictions on availability.

**Statutory Authority for Adoption:** RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department (ESD). RCW 50.12.042 provides specific rule-making authority regarding the requirement that unemployment claimants be able to work, available for work, and actively seek work. RCW 50.20.100 provides rule-making authority to determine what factors are used to determine suitable work.

**Statute Being Implemented:** RCW 50.20.010, 50.20.100.

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

**Name of Proponent:** ESD, governmental.

**Name of Agency Personnel Responsible for Drafting:** Scott Michael, Olympia, 360-890-3448; **Implementation and Enforcement:** Julie Lord, Olympia, 360-890-3635.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. From July 1, 2017, through July 1, 2019, the department denied twenty-two thousand one hundred five claims for claimants who were not available during the work hours and days usual for their type of work. Each claim, on average, represents \$7,285 in charged benefits to an employer. When considering the total denied claims spread across the state-wide employer base, the proposed rule would increase each employers' average charged benefits by \$130.48 per year. An increase of this

size is unlikely to increase the tax liability for many employers.

August 3, 2020  
Dan Zeitlin  
Policy Director

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-140-200 What happens if I certify that I am not able to or available for work?** (1) Benefits will be ~~denied or reduced ((under RCW 50.20.130))~~ in accordance with WAC 192-170-020 without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work ~~((on one or two days of a week or weeks being claimed))~~ for at least forty hours during the week during the hours customary for your trade or occupation; and

(b) ~~((The day or days to which this condition applies are normal working days in your regular occupation; and~~

~~(e)))~~ The information supplied clearly supports this finding.

~~((This reduction applies only to the day or days for which available information shows you are ineligible for benefits.~~

~~(2) Benefits will be denied under RCW 50.20.010 (1)(e) without requiring additional information or interview if you file a weekly claim that:~~

~~(a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and~~

~~(b) The days to which this condition applies are normal working days in your regular occupation; and~~

~~(e) The information supplied clearly supports this finding.~~

~~This denial applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.~~

~~((3))~~ (2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

~~((4))~~ (3) Any denial of benefits under subsections ~~((2) and (3))~~ (1) and (2) of this section will be issued without delay. The department will not issue a written decision when benefits are reduced under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 10-11-046 [20-11-022], filed 5/12/10 [5/13/20], effective 6/12/10 [7/5/20])

**WAC 192-170-010 Availability for work—RCW 50.20.010.** (1) In general, the department will consider you available for work if you:

(a) Are willing to ~~((work))~~ accept suitable full-time, part-time, and ~~((accept))~~ temporary work during ~~((all of))~~ the

usual hours and days of the week customary for your occupation.

(i) You are not required to ~~((be available for))~~ accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be ~~((available for))~~ willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least forty hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

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

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

#### NEW SECTION

**WAC 192-170-020 Benefit reductions due to only partial availability—RCW 50.20.130(1).** (1) If you are available for at least forty hours during the week during the hours customary for your trade or occupation, benefits will not be reduced under RCW 50.20.130(1).

(2) If you are available for at least thirty-five but less than forty hours during the week during the hours customary for your trade or occupation, your weekly benefit amount will be reduced by one-seventh.

(3) If you are available for at least thirty but less than thirty-five hours during the week during the hours customary for your trade or occupation, your weekly benefit amount will be reduced by two-sevenths.

(4) If you are not available for at least thirty hours during the week during the hours customary for your trade or occupation, benefits will be denied under RCW 50.20.010 (1)(c).

AMENDATORY SECTION (Amending WSR 02-08-072, filed 4/2/02, effective 5/3/02)

**WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110.** (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job.

(b) The department may determine in individual circumstances that less than full-time work is suitable if:

(i) The disability prevents you from working the number of hours that are customary to the occupation;

(ii) You are actively seeking work for the occupation and hours you have the ability to perform; and

(iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, shifts of employment, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

(i) The restrictions on the tasks or work-related functions you can perform;

(ii) The restrictions on the number of hours you can work, if any;

(iii) The expected duration of the disability and resulting work restrictions; and

(iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

(2) **Definitions.** For the purposes of this chapter:

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

AMENDATORY SECTION (Amending WSR 05-19-018, filed 9/9/05, effective 10/10/05)

**WAC 192-170-070 What are the availability requirements for part-time eligible workers?—RCW 50.20.119.**

~~((+))~~ If you are a part-time eligible worker as defined in RCW 50.20.119~~((, you may limit your availability for work to))~~:

(1) You must be willing to accept work of 17 or fewer hours per week. You may refuse any job of 18 or more hours per week.



(2) You must be available for work at least 17 hours per week during the usual hours and days of the week customary for your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must ~~((be available for work all days of the week that are usual for your occupation, even if you have not worked those days in the past. If you are not available for work on any day that is a usual day of work for your occupation, we will reduce your benefits under RCW 50.20.130. For example, if your occupation usually works Monday through Friday, you must be available for work Monday through Friday, even if you have only worked weekends in the past))~~ not impose conditions on your availability that substantially reduce or limit your opportunity to return to work at the earliest possible time.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-170-090 Incarceration.** (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

~~(((4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part of your regular work week based on your occupation. Example: You are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.))~~

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-200-005 Disqualification of students—RCW 50.20.095.** (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of twelve or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for twelve or more hours of instruction. You must certify to the department that you are not currently registered for twelve or more credit hours and will not be registered for twelve or more credit hours for at least sixty days. If you begin classes within sixty days, all benefits paid since the date of your certification will be considered an overpayment.

This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than sixty days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

(c) Show by a preponderance of the evidence that ~~((your student status does not significantly interfere with your actual availability for work when you apply))~~ you meet the availability requirements in chapter 192-170 WAC.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

## WSR 20-16-148

### PROPOSED RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed August 5, 2020, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-111.

Title of Rule and Other Identifying Information: Implementing SHB 2614 (chapter 125, Laws of 2020) related to administering the paid family and medical leave program.

Amending WAC 192-500-010 Employer, 192-500-035 Interested parties and 192-500-185 Waiting period; and adding new WAC 192-570-030 What is the process for an employee to file a complaint alleging that an employer committed unlawful acts?, 192-570-040 What happens when the department receives a complaint alleging unlawful acts by an employer?, and 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?

Hearing Location(s): On September 9, 2020, at 9:00 a.m.

Conference call number: 360-407-3780. PIN: 962631#.

Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after September 23, 2020.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), online portal [https://www.opentownhall.com/portals/289/forum\\_home?phase=open](https://www.opentownhall.com/portals/289/forum_home?phase=open), by September 9, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email [Teckstein@esd.wa.gov](mailto:Teckstein@esd.wa.gov), by September 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments and new rules implement provisions of SHB 2614. The definition of employer is amended to add a reference to casual labor. The definition of interested parties is amended to allow interested parties to receive information about complaints under chapter 50A.40 RCW. The definition of waiting period is amended to reference that the waiting period does not apply to family leave taken for reasons related to a qualified military exigency. New rules are added to outline the process for employees to file complaints alleging unlawful acts by an employer, the process ESD will use to investigate allegations of unlawful acts, and how the department will assess damages and liquidated damages when an employer violates RCW 50A.40.010.

Reasons Supporting Proposal: Rule making is necessary in order to implement the provisions of SHB 2614. The proposed rules will assist in clarifying the requirements of SHB 2614 and provide clear and usable guidance to the public regarding program operations.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.010, 50A.15.020; chapter 50A.40 RCW.

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

Name of Proponent: ESD, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, WA, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. The amendment to WAC 192-500-010 incorporates by reference the definition of casual labor in RCW 50A.05.010 and is exempt under RCW 34.05.328 (5)(b)(iii) and (v).

The amendment to WAC 192-500-035 adds the subject of "complaints under chapter 50A.40 RCW" to determinations made by the department which are sent to interested parties. The amendment is exempt under RCW 34.05.328 (5)(b)(ii) and (c)(i). The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is also a procedural rule because it adopts a policy pertaining to the internal operations of the department.

The amendment to WAC 192-500-185 is explicitly and specifically dictated by RCW 50A.15.020 and is exempt under RCW 34.05.328 (5)(b)(v).

WAC 192-570-030, 192-570-040, and 192-570-050 are new rules exempt under RCW 34.05.328 (5)(b)(iii) and (v) because the rules adopt or incorporate statute by reference

and are explicitly and specifically dictated by RCW 50A.05.-010 and chapter 50A.40 RCW.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The amendment to WAC 192-500-010 incorporates by reference the definition of casual labor in RCW 50A.05.010 and is exempt under RCW 34.05.310 (4)(c) and (e).

The amendment to WAC 192-500-035 adds the subject of "complaints under chapter 50A.40 RCW" to determinations made by the department which are sent to interested parties. The amendment is exempt under RCW 34.05.310 (4)(b) and (g)(i). The amendment references an internal department operation and does not subject a nongovernment party to a violation. It also amends a procedure, practice, or requirement related to agency hearings.

The amendment to WAC 192-500-185 is explicitly and specifically dictated by RCW 50A.15.020 and is exempt under RCW 34.05.310 (4)(e).

WAC 192-570-030, 192-570-040, and 192-570-050 are new sections exempt under RCW 34.05.310 (4)(c) and (e) because the content of the rules is explicitly and specifically dictated by RCW 50A.05.010 and chapter 50A.40 RCW.

August 5, 2020  
April Amundson  
Policy and Rules Manager  
for Paid Family and Medical Leave

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-500-010 Employer.** (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and

(d) A franchisee.

(2) "Employer" does not include the United States of America.

(3) For the purposes of paid family and medical leave, the term employer is used for both employer and employer agent.

(4) This section does not apply to:

(a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50A RCW; and

(b) Any person performing casual labor as defined in RCW 50A.05.010.

**AMENDATORY SECTION** (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-500-035 Interested parties.** (1) In all determinations, cases, and appeals adjudicated under Title 50A RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, complaints under chapter 50A.40 RCW, and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

**AMENDATORY SECTION** (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

**WAC 192-500-185 Waiting period.** (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) Subject to subsection (6) of this section, an employee must only meet the requirement of one waiting period in a claim year.

(5) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

(6) The waiting period does not apply to:

(a) Family leave taken for bonding after the child's birth or placement; or

(b) Family leave taken for reasons related to a qualified military exigency.

(7) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

#### **NEW SECTION**

**WAC 192-570-030 What is the process for an employee to file a complaint alleging that an employer committed unlawful acts?** (1) Any employee as defined in RCW 50A.05.010 may file a complaint with the department alleging one or more violations of RCW 50A.40.010. A complaint must be submitted on a form provided by the department, or in another format approved by the department.

(2) An employee may alternatively seek a private right of action under chapter 50A.40 RCW to recover damages described in RCW 50A.40.030. A private right of action is only available to an employee who has:

(a) Not filed a complaint with the department;

(b) Withdrawn a filed complaint under subsection (4) of this section; or

(c) Resolved a complaint under subsection (5) of this section.

(3) All complaints alleging a violation of RCW 50A.40.-010, whether filed with the department or through a private right of action, must be filed within three years of the date the violation is alleged to have occurred.

(4) An employee who has filed a complaint with the department may withdraw the complaint by providing written notice to the department within ten days from the date the department acknowledges receipt of the complaint. A withdrawal of a complaint terminates the department's administrative action, including investigation of the complaint.

(5) If a resolution is reached between the employee and the employer during the course of the investigation, a statement of resolution must be signed by the employee and the employer and provided to the department. Resolution between the employee and the employer terminates the department's administrative action related to the complaint.

#### **NEW SECTION**

**WAC 192-570-040 What happens when the department receives a complaint alleging unlawful acts by an employer?** (1) Upon receipt of a complaint, the department will investigate allegations of an employer committing unlawful acts as described in RCW 50A.40.010.

(2) The department may request additional information from other parties including, but not limited to, employees, employers, and potential witnesses.

(3) Under chapter 50A.05 RCW, the department may subpoena potential witnesses, compel their attendance for deposition, and require production for examination of any books, papers, correspondence, memoranda, and any other records deemed necessary as evidence in order to make a determination and assess all damages.

(4) If the department finds a violation did not occur, the complaint will be closed and a determination will be sent to all interested parties.

(5) If the department finds one or more violations occurred, the department will determine the monetary amount of all damages the employer owes to the employee as referenced in WAC 192-570-050, and a determination will be sent to all interested parties.

(6) Any aggrieved party may file an appeal of the department's determination under chapter 50A.50 RCW.

(7) The department may consider any information obtained in the investigation under this chapter as cause to initiate audits for employer files and records.

#### NEW SECTION

#### **WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?**

(1) If the department finds the employer has violated RCW 50A.40.010, the department will assess monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within thirty calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.

#### **WSR 20-16-149**

#### **PROPOSED RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed August 5, 2020, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-112.

Title of Rule and Other Identifying Information: Amending WAC 192-500-040 Aggrieved party, 192-500-070 Claim year, 192-500-080 Qualifying event, 192-500-170 Self-employed, 192-610-025 Documenting the birth or placement of a child for paid family leave, 192-620-035 When will a weekly benefit amount be prorated?, 192-800-035 Who can appeal or submit a petition for review?, 192-800-045 When can an appeal be withdrawn? and 192-800-110 What options are available for an aggrieved party who received an order of default?; and adding WAC 192-500-195 Placement and 192-510-090 How will the department determine the premium rate for each calendar year?

Hearing Location(s): On September 9, 2020, at 9:00 a.m.

Conference call 360-407-3780 // PIN: 962631 #. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after September 23, 2020.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, online portal [https://www.opentownhall.com/portals/289/forum\\_home?phase=open](https://www.opentownhall.com/portals/289/forum_home?phase=open), by September 9, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by September 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments and new rules implement a number of changes, including: Adding a definition of "placement" of a child for eligibility for family bonding leave; clarifying when a claim year will be established; clarifying the documentation required for the birth or placement of a child; describing how a benefit will be prorated; and making other clarifying changes.

Reasons Supporting Proposal: The rules are necessary to assess benefit eligibility and ensure employee privacy in the event of identity theft. Additional proration requirements are necessary to ensure proper payment consistent with statutory requirements if an employee's leave begins in the middle of a week. The proposed rules will provide clear and usable guidance to the public regarding program operations and the calculation of the premium rate.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.010, 50A.10-030, 50A.15.020, 50A.15.040, 50A.15.060; chapter 50A.50 RCW.

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

Name of Proponent: ESD, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, WA, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. WAC 192-500-040, 192-500-080, 192-500-170, 192-800-035, and 192-800-045 are exempt under RCW 34.05.328 (5)(b)(iv) because the rules correct references and clarify language without changing the effect of the rules.

WAC 192-800-110 is exempt under RCW 34.05.328 (5)(c)(i)(A) because it is a procedural rule related to agency hearings.

WAC 192-500-070, 192-500-195, 192-510-090, and 192-610-025 are exempt under RCW 34.05.328 (5)(c)(ii) because they are interpretive rules that set forth the agency's interpretation of statutory provisions.

WAC 192-620-035 is exempt under RCW 34.05.328 (5)(b)(ii) because the rule is related to internal governmental operations not subject to violation by a nongovernment party.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not

subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: WAC 192-500-040 Aggrieved party, the rule is exempt under RCW 34.05.310 (4)(d) and (g)(i) because the amendments correct or clarify language without changing the effect of the rule and relate to agency hearings.

WAC 192-500-080 Qualifying event, the rule is exempt under RCW 34.05.310 (4)(d) because the amendments correct or clarify language without changing the effect of the rule.

WAC 192-500-170 Self-employed, the rule is exempt under RCW 34.05.310 (4)(d) because the amendments correct or clarify language without changing the effect of the rule.

WAC 192-510-090 How will the department determine the premium rate for each calendar year?, the rule is exempt under RCW 34.05.310 (4)(b) and (e) because the rule relates to internal government operations and is dictated by statute.

WAC 192-800-035 Who can appeal or submit a petition for review?, the rule is exempt under RCW 34.05.310 (4)(d) and (g)(i) because the amendments correct or clarify language without changing the effect of the rule and relate to agency hearings.

WAC 192-800-045 When can an appeal be withdrawn?, the rule is exempt under RCW 34.05.310 [(4)](g)(i) because the amendments relate to a procedure or practice regarding agency hearings.

WAC 192-800-110 What options are available for an aggrieved party who received an order of default?, the rule is exempt under RCW 34.05.310 (4)(g)(i) because the amendments relate to agency hearings.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The following rules do not impact businesses and pertain only to individuals applying for paid family or medical leave benefits: WAC 192-500-070 Claim year, 192-500-195 Placement, 192-610-025 Documenting the birth or placement of a child for paid family leave, and 192-620-035 When will a weekly benefit amount be prorated?

August 5, 2020  
April Amundson  
Policy and Rules Manager  
for Paid Family and Medical Leave

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-500-040 Aggrieved ((person)) party.** An "aggrieved ((person)) party" is any interested party who receives an adverse decision from:

- (1) The department for which the department has provided notice of appeal;
- (2) The employer with an approved voluntary plan for which that employer has provided notice of appeal;
- (3) The office of administrative hearings; or
- (4) The commissioner's review office.

AMENDATORY SECTION (Amending WSR 20-11-033, filed 5/14/20, effective 6/14/20)

**WAC 192-500-070 Claim year.** (1) A "claim year" is the period beginning Sunday of the week of the date an eligible employee files a complete initial application for benefits and ending the Saturday fifty-two weeks later.

(2) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date ~~((of such birth or placement))~~ the child was first placed in the home.

(3) For applications that are backdated, the claim year is the fifty-two week period beginning Sunday of the week to which the application was backdated.

(4) An employee may only have one valid claim year at a time.

(5) A new claim year will not be established for an employee who:

(a) Is determined to have less than eight hundred twenty hours in their qualifying period; or

(b) Fails to sufficiently prove their identity to the department.

**Example 1:** An employee experiences an injury that qualifies as a serious health condition. Three days later, on Thursday, March 4, 2021, the employee files a complete initial application for medical leave benefits. The employee's claim year will run from Sunday, February 28, 2021, to Saturday, February 26, 2022.

**Example 2:** An employee filed an application for medical leave in March 2021. The employee took four weeks of medical leave and returned to work. The employee's spouse gives birth to a child in September 2021. The employee elects not to take family leave until April 2022. Because the employee's first claim year has already expired, the employee must file a new application and begin a new claim year in order to take family leave beginning in April 2022.

**Example 3:** An employee gives birth on Thursday, March 4, 2021. The employee elects not to submit an application for paid family leave until Monday, April 5, 2021. Though the employee's claim year will run from Sunday, April 4, 2021, to Saturday, April 2, 2022, the employee will not be able to claim family leave after March 3, 2022, for the birth of the child. The employee can claim leave for other qualifying reasons for the period March 4, 2022, through April 2, 2022, subject to the maximum duration limits.

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

**WAC 192-500-080 Qualifying event.** A "qualifying event" is:

- (1) For family leave, events described in RCW 50A.05.-010((~~09~~)) (10) and related rules.

(2) For medical leave, events described in RCW 50A.05.-010(~~((+4))~~) (15) and related rules.

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

**WAC 192-500-170 Self-employed.** (1) A "self-employed" person is:

- (a) A sole proprietor;
- (b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;
- (c) A member of a limited liability company;
- (d) An independent contractor who works as described in RCW 50A.05.010 (~~((7)(b)(ii))~~) (8)(b)(iii) and (iv); or
- (e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.

(2) A corporate officer is an employee and not self-employed.

NEW SECTION

**WAC 192-500-195 Placement.** (1) For the purposes of qualifying for paid family leave to bond with a child under RCW 50A.05.010, "placement" means the adoptive, guardianship, foster care, or nonparental custody placement of a child under the age of eighteen with the employee. A placement is considered:

(a) An adoptive placement when the employee is legally and permanently assuming the responsibility of raising the child as their own, and the placement of the child into the employee's home is made through a private arrangement, a child placement agency, or a government agency.

(b) A guardianship placement when the employee is granted guardianship of a child by court order, and the child is placed in the home under:

- (i) Title 11 RCW;
- (ii) Title 13 RCW; or
- (iii) Any other applicable guardianship that reflects the purpose, permanency, and legal authority of guardianships under Titles 11 and 13 RCW, including guardianships granted out of this state or country.

(c) A foster care placement when the employee is providing care for a child placed in the employee's home. Such placements must involve voluntary or involuntary removal of the child from the child's parents or guardian, and an agreement between a government agency and the foster family that the foster family will take care of the child. Although foster care placement may be with a relative of the child or another individual who may not have a foster care license, government agency action must be involved in the removal of the child.

(d) A nonparental custody placement when the child is placed into the home of the employee by court order granting the employee nonparental custody.

(2) For the purposes of this section, a "government agency" may include an agency of any branch of government at the county, state, or federal level, or a foreign jurisdiction.

(3) The entitlement to paid family leave benefits for placement of a child expires at the end of the twelve-month period beginning on the date the child was first placed in the home.

(4) When applying for paid family leave to bond with a child, the employee must provide documentation referenced in WAC 192-610-025 to verify placement of the child.

(5) Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:

- (a) Placement with a birth parent; and
- (b) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than twelve months after that child is first placed in the employee's home.

NEW SECTION

**WAC 192-510-090 How will the department determine the premium rate for each calendar year?** (1) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year.

(2) The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage.

(3) For the purposes of this section, "total covered wages" is defined as the total amount of wages paid to employees that are subject to the paid family and medical leave premium from July 1st of the previous calendar year to June 30th of the current calendar year as reported by employers.

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-610-025 Documenting the birth or placement of a child for paid family leave.** (1) When paid family leave is taken to bond with the employee's child after birth (~~((or placement, the department may request))~~), the employee must provide a copy of:

- ~~((+))~~ (a) The child's birth certificate; or
- ~~((2))~~ (b) Certification of birth from a health care provider (~~((; Court documents to show))~~).

(2) When paid family leave is taken to bond with the employee's child after the child's placement as defined in WAC 192-500-195, the employee must provide a copy of a court order verifying placement (~~((; or~~

~~((Other reasonable))~~). If a court order is not available, the department may accept alternate documentation sufficient to verify the placement.

(3) Additional documentation may be requested to substantiate the qualifying event.

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-620-035 When will a weekly benefit amount be prorated?** (1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

~~((1))~~ (a) The employee ~~((works))~~ reports hours ~~((for wages; or~~

~~(2))~~ worked;

(b) The employee ~~((uses))~~ reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee did not claim paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) If an employee claims part of a week under subsection (1)(c) of this section, proration will be calculated by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section.

**Example 1:** An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually ~~((800))~~ eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ~~((40))~~ forty hours. Eight hours is ~~((20% of 40))~~ twenty percent of forty hours. The employee's weekly benefit would be prorated to ~~((20%))~~ twenty percent for a total of ~~((160))~~ one hundred sixty dollars.

**Example 2:** An employee files a claim for eight hours of paid family and medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid family and medical leave. This employee is not eligible for benefits for this week.

**Example 3:** The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar).

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-800-035 Who can appeal or submit a petition for review?** (1) An aggrieved ~~((person))~~ party as defined in WAC 192-500-040 may file an appeal to the department by using the department's online services, or in another format approved by the department.

(2) Any aggrieved ~~((person))~~ party who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-800-045 When can an appeal be withdrawn?** An aggrieved ~~((person))~~ party may withdraw their appeal or petition for review upon approval by the office of administrative hearings or the commissioner's review office, respectively, at any time prior to the decision, in which case the determination, redetermination, order and notice of assessment of premiums or penalties, or other decision appealed, shall be final in accordance with the provisions of Title 50A RCW.

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-800-110 What options are available for an aggrieved ~~((person))~~ party who received an order of default?** (1) Any ~~((person))~~ party aggrieved by the entry of an order of default may:

(a) File a motion to vacate the order of default with the office of administrative hearings within ~~((seven))~~ ten days of ~~((issuance))~~ the date of mailing of the order of default; or

(b) File a petition for review from such order by complying with the filing requirements set forth in WAC 192-800-100.

(2) The provisions in subsection (1)(a) of this section toll the appeal period for filing a timely petition for review with the commissioner's review office until the office of administrative hearings issues a ruling on the motion. However, should a petition for review be filed while a ruling on a motion to vacate is pending, the office of administrative hearings no longer has jurisdiction to vacate the default order.

(3) Under subsection (1)(a) of this section, an order of default will be vacated by the presiding officer only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. If the order of default is vacated, the presiding administrative law judge will conduct a hearing on the merits and issue a decision.

(4) Under subsection (1)(b) of this section, an order of default will be set aside by the commissioner's review office only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such an order of default is set aside, the com-

missioner will remand the matter to the office of administrative hearings for hearing and decision.

**WSR 20-16-153**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed August 5, 2020, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-074.

Title of Rule and Other Identifying Information: WAC 314-55-013 Voluntary marijuana licensee consultation and education program, the Washington state liquor and cannabis board (WSLCB) is proposing to create a new section of rules to establish a voluntary compliance program for marijuana licensees consistent with the mandates of ESSB 5318 (chapter 394, Laws of 2019), now codified as RCW 69.50.342(3) and 69.50.561.

Hearing Location(s): On September 16, 2020, at 10:00 a.m., at 1025 Union Avenue S.E.

Date of Intended Adoption: October 14, 2020.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue S.E., Olympia, WA 98504-3080 [98501], email rules@lcb.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5318 emphasized a strong focus on compliance, education, and enforcement in the oversight of the regulated marijuana market. The bill mandated that the board adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The proposed new rule section implements this mandate by establishing a new voluntary marijuana licensee consultation and education program, and includes the following subsections: Purpose and scope, definitions, a framework for requesting advice and consultation services that among other things, describes how recommendations for abating violations described in chapter 69.50 RCW will be provided to licensees; and a licensee responsibility section that describes the process in which licensees may correct or abate conditions identified in a statement of conditions.

Reasons Supporting Proposal: ESSB 5318 involving marijuana licensee compliance and enforcement became effective July 28, 2019. Among other revisions, ESSB 5318 amended RCW 69.50.342, and created a new section, now codified as RCW 69.50.561, describing a program where a licensee may request advice and consultation from board enforcement.

The board is statutorily required to establish such a program consistent [with] the intent of ESSB 5318, and adopt rules regarding the frequency, manner and method of providing consultative services to licensees. RCW 69.50.561(7) specifically provides that the rules may include scheduling of consultative services and prioritizing requests for services while maintaining the enforcement requirements of the chapter. The program must be created in consultation with

licensed marijuana businesses and their employees, and is required to include recommendations on abating violations described in chapter 69.50 RCW and chapter 314-55 WAC.

Advice and consultation services requested under these rules are limited to the matters specified in the request affecting the interpretation and applicability of the standards described in chapter 69.50 RCW as to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices of the licensee's licensed premises.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.561.

Statute Being Implemented: RCW 69.50.342(3), 69.50-561.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98502 [98501], 360-664-1622; Implementation and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue S.E., Olympia, WA 98502 [98501], 360-664-1726.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1622.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(e); WAC 314-55-013.

Explanation of exemptions: WAC 314-55-013 adopts and incorporates the requirements of ESSB 5318, codified in RCW 69.50.342(3) and 69.50.561.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The WSLCB applied a default cost of compliance (\$500) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This assumes the following costs, and assumes that the majority of marijuana businesses in Washington state are considered small as defined in RCW 19.85.020(3):

- Costs associated with the administrative process of requesting once-per-year consultation services by the licensee or their designee, including completion of the online request for consultation, and any associated interaction with board representatives to schedule the consultation service. The time to complete these annual administrative tasks is estimated at three hours. Since there is not available data establishing an average hourly wage for marijuana business owners or their designees, and this figure could widely vary, the agency estimated an hourly wage of \$50. Under that premise, the estimated



annual cost of compliance for these annual activities is \$150.00 (3 x \$50 = \$150).

- Costs associated with the initial meeting, walk through meeting and any follow up meetings that may result in time away from business operation. The agency estimated this time to be two hours annually, based on an hourly rate calculated above of \$50 per hour for an annual estimated cost of compliance of \$100.00 (2 x \$50 = \$100).
- Costs associated with abating a noted condition. The agency estimated this time to be an average of three hours annually based on an hourly rate of \$50 an hour (5 x \$50 = \$250). We did not estimate the widely variable costs of repair, purchasing new equipment or other related costs since this is not a requirement under the rule and considered an indirect cost of compliance. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. For example, if the proposed rule requires that businesses install a new safety feature, the agency does not have to consider the increase in sales for manufacturers of the new safety feature or decreases in sales of the old safety feature. The agency also need only consider costs incurred by businesses for compliance with the rule. RCW 19.85.040(1).

Here, those costs are related only to the administrative aspects of the request for consultation services and associated activities.

Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance as noted above and calculated below, the estimated cost of compliance does not exceed any of the thresholds for any of the license types. Therefore, the board does not anticipate that implementation of these rules will result in any administrative, intrinsic or actual costs to the licensees who wish to participate in this voluntary program.

The new rules offer increased public benefit by offering marijuana licensees an opportunity to request advice and consultation services that will be provided consistent with statutory provisions. Consultation services increase educational opportunities that offer pathways to licensee success, and support marijuana business production, processing and retail best practices. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
31199	\$500	Marijuana Processors	All Other Food Manufacturing	22,986.58	\$9,214.26 2018 Dataset pulled from USBLS	\$22,986.58 2018 Dataset pulled from DOR
111	\$500	Marijuana Producers	Crop Production	4,010.47	\$4,010.47 2018 Dataset pulled from USBLS	\$2,399.33 2018 Dataset pulled from DOR
453	\$500	Marijuana Retailers	Miscellaneous Store Retailers	\$2,503.84	\$2,365.88 2018 Dataset pulled from USBLS	\$2,503.84 2018 Dataset pulled from DOR

August 5, 2020  
Jane Rushford  
Chair

NEW SECTION

**WAC 314-55-013 Voluntary marijuana licensee consultation and education program. (1) Purpose and scope.** The purpose of this section is to:

- (a) Establish a program for marijuana licensee consultation and education visits consistent with the requirements of RCW 69.50.342(3) and 69.50.561;
- (b) Establish criteria for the provision of advice, consultation, and education visits including, but not limited to, recommendations on abating violations of this chapter;

(c) Ensure that advice, consultation and education visits are distinguished from inspections, technical visits, or investigations, and are limited to interpretation and applicability of standards in this chapter including, but not limited to, the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means and practices in the licensee's licensed premise; and

(d) Advice, consultation, and educational visits provided under this program do not include business advice concerning issues that may include, but are not limited to, individual

business operations, marketing, distribution, financing, profitability, or viability.

**(2) Definitions.**

(a) For purposes of this chapter, "a direct or immediate relationship to public health and safety" or "a direct or immediate risk to public health and safety" means, where the board can prove by a preponderance of the evidence:

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

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

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

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

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

(vi) Violations outlined in WAC 314-55-509 (1)(a), (b), and (c), and more fully described in WAC 314-55-520, 314-55-521, and 314-55-522.

(b) The definitions contained in chapters 314-55 WAC and 69.50 RCW also apply to this section.

**(3) Request for consultation.**

(a) A marijuana licensee or their designee may make one request for advice and consultation per year by completing and submitting an application to request consultation through the board's website. Additional requests may be considered at the board's discretion.

(b) A board representative will schedule and complete advice and consultation visits within forty-five calendar days of receipt of the request for consultation.

(i) If the marijuana licensee or designee, or the board representative requires more than forty-five calendar days to schedule and complete the consultation visit, the board representative may extend the completion deadline.

(ii) If the deadline is extended, at the licensee's request, more than sixty days after the board's receipt of the request for consultation, the marijuana licensee must resubmit a request for consultation consistent with this section.

**(4) Advice and consultation services.**

(a) Advice and consultation services offered in connection with a request for consultation do not preclude informal requests, or usual and customary interactions between licensees, the board, or any board staff.

(b) Regulatory issues described in this chapter observed during the course of an advice, consultation, and education visit are not subject to disciplinary action unless the identified issue has a direct or immediate relationship to public health and safety.

(c) Advice, consultation, education, and any written report or documentation provided under this section is limited to the matters specified in the request for consultation. At the request of the licensee, a consultation may include:

(i) An initial meeting to explain the licensee's rights and obligations;

(ii) A walk-through visit to evaluate the compliance concerns specified in the request for consultation;

(iii) A closing meeting to discuss conditions noted during the initial visit to make recommendations;

(iv) A written report of conditions found in the marijuana licensee's place of business and any recommendations or agreements made; or

(v) A follow-up visit, if appropriate, to ensure that the conditions specified in the request for consultation have been satisfactorily abated.

(d) If an identified condition is not a direct or immediate risk to public health and safety, the condition will be documented in the appropriate database as part of the consultation visit, and will include the following:

(i) A detailed description of the condition that is not in compliance;

(ii) The full text of the specific section or subsection of the statute or rule applicable to the condition that is not in compliance;

(iii) A statement and complete description of the actions and steps the licensee or their designee must take to achieve compliance;

(iv) The date, method of service, name, and signature of the licensee, their designee, or both participating in the visit; and

(v) The date that the licensee or their designee must achieve compliance. This date may be mutually agreed upon by the board representative and the licensee or their designee, and may be based on a variety of factors including, but not limited to, the cost and severity of the conditions to be abated.

(e) A consultation report or notice to correct made by a board representative under this section is not a formal enforcement action.

(f) The board representative will provide the licensee or their designee with instructions regarding how to request an extension of time consistent with subsection (5) of this section.

(g) The board representative may perform a follow-up visit within sixty days of the mutually agreed upon compliance date based on the severity of the conditions described in this section.

**(5) Licensee responsibilities.**

(a) A marijuana licensee or their designee agrees to work with the board representative to schedule a consultation visit at a mutually agreed upon date and time.

(b) A marijuana licensee or their designee agrees to make reasonable efforts to correct or abate all conditions identified in the statement of conditions within the mutually agreed upon date and time.

(c) If a marijuana licensee or their designee is unable to correct or abate all of the conditions identified in the statement of conditions, the licensee or their designee may request an extension of time by submitting a written request. The written request must describe:

(i) The need for the extension;

(ii) Confirmation of the steps taken to abate the conditions described in the statement of conditions; and

(iii) A proposed abatement date.

**WSR 20-16-154**  
**WITHDRAWAL OF PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

(By the Code Reviser's Office)  
[Filed August 5, 2020, 11:40 a.m.]

WAC 314-55-101, 314-55-102, 314-55-1021, 314-55-1022, and 314-55-1025, proposed by the liquor and cannabis board in WSR 20-03-176, appearing in issue 20-03 of the Washington State Register, which was distributed on February 5, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 20-16-155**  
**WITHDRAWAL OF PROPOSED RULES**  
**BOARD OF TAX APPEALS**

(By the Code Reviser's Office)  
[Filed August 5, 2020, 11:41 a.m.]

WAC 456-09-920, proposed by the board of tax appeals in WSR 20-03-026, appearing in issue 20-03 of the Washington State Register, which was distributed on February 5, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register