

WSR 21-21-112
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY
 [Filed October 20, 2021, 9:33 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations: Existing Regulation 1 General Provisions—Rules 1.1-1.2, 1.4-1.11; Regulation 2 Enforcement Procedures and Penalties; Regulation 3 Fees; Regulation 4 Registration; Regulation 5 Operating Permit Program; Regulation 6 Permits Required—Rules 6.1-6.1.12, 6.2, 6.2.2-6.2.3, 6.2.5-6.2.8, 6.3-6.3.11; Regulation 7 Prohibitions; Regulation 8 Performance Standards—Rules 8.1.1-8.1.5, 8.1.7-8.1.8, 8.2-8.7, 8.9-8.11, 8.12.1-8, 8.12.2, 8.12.4-8.12.6, 8.13-8.15, 8.17; and New Rules 1.12 State Regulations Reference Date and 6.4 Notice of Intent to Operate.

Hearing Location(s): On January 12, 2022, at 10:00 a.m., at ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: January 12, 2022.

Submit Written Comments to: Debbie Moody, 2940 Limited Lane N.W., email Debbie.moody@orcaa.org, fax 360-491-6308, by January 7, 2022.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by January 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is an update of legal references and grammatical changes. The anticipated effects of the many changes are expected to be minimal. ORCAA is not expecting any changes in our existing operating practices as a result of these changes.

Specifically, the RCW references throughout the Regulations are changed from chapter 70.94 RCW to chapter 70A.15 RCW. Several references to WAC were deleted or updated. The term "Control Officer" is being replaced with "Executive Director" throughout the regulations. The term "shall" is mostly replaced throughout the Regulations. Grammar was updated throughout the Regulations. Typographical errors were corrected throughout the Regulations. Definitions were deleted that were not used in the Regulations. A few of the definitions were modified to reference existing definitions in the RCW and/or WAC.

New Rule 1.12 State Regulations Reference Date was added. Where state regulations are referenced in ORCAA's Regulations, this Rule specifies which iteration of the state regulations apply.

Rule 4.5 Registration of Portable Equipment was repealed.

Material in Rule 5.2 was deleted. It dealt with the classification of Air Operating Sources but has been determined that it is no longer needed. There would be no impact by this change.

Rule 6.1 (b)(1-3) was deleted. New Rule 6.4 Notice of Intent to Operate was created to contain the regulations deleted in Rule 6.1.

Material in Rule 6.1.1 was deleted. New Rule 6.4 Notice of Intent to Operate was created to contain the regulations deleted in Rule 6.1.1.

Material in Rule 6.1.7 was deleted. New Rule 6.4 Notice of Intent to Operate was created to contain the regulations deleted in Rule 6.1.7.

New Rule 6.4 Notice of Intent to Operate was added to the Regulations. Former rules 4.5, 6.1 (b)(1-3), 6.1.1, and 6.1.7 are contained in this new Rule.

Rule 8.4 Incineration or Cremation operation was amended to clearly state that Rule 8.4 applied to incinerators and crematories.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Moody, 2940 Limited Lane N.W., Olympia, 360 539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, 360 539-7610.

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

A cost-benefit analysis is not required under RCW 34.05.328.RCW 34.05.328 applies to state government. It does not apply to local air agencies per RCW 70A.15.2040.

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

October 20, 2021
 Francea L. McNair
 Executive Director

AMENDATORY SECTION REGULATIONS

of the

OLYMPIC REGION CLEAN AIR AGENCY

Clallam, Grays Harbor, Jefferson, Mason, Pacific and Thurston Counties

ADOPTED BY THE BOARD OF DIRECTORS

ON DECEMBER 3, 1969

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NOTICE

The regulations, rules, and emission standards of the Olympic Region Clean Air Agency (ORCAA), and as described on the following pages are the basic law for the geographical area covered and are the priority regulations for the same subject matter covered by other laws concerning air pollution control.

Other Reference in Law Concerning

AIR POLLUTION IN THE STATE OF WASHINGTON

(1) Chapter ~~70A.(94))15~~ Revised Code of Washington, the State Clean Air Act: and related administrative codes of the State of Washington Department of Ecology, (~~Chapter 18 and~~) Title 173 WAC.

(2) United States Public Law (~~(95-95))101-549~~, Clean Air amendments of ~~19((77))90~~: and related regulations and standards of the U.S. Environmental Protection Agency as found in the Federal Register.

AMENDATORY SECTION RULE 1.1 POLICY

The Olympic Region Clean Air Agency (Agency), consisting of the counties of Clallam, Grays Harbor, Jefferson, Mason, Pacific and Thurston, having formed pursuant to chapter ~~70A.(94))15~~ RCW, as amended, adopts the following Regulations to control the emission of air contaminants from sources within the jurisdiction of the Agency: to provide for the uniform administration and enforcement of these Regulations: and to administer the requirements and purposes of chapter ~~70A.(94))15~~ RCW, as amended, and the Federal Clean Air Act.

It is hereby declared to be the public policy of the Olympic Region Clean Air Agency to secure and maintain such levels of air quality as will protect human health and safety; and, to the greatest degree practicable, prevent injury to plant and animal life and to property; and be consistent with the social, economic, and industrial well-being of the territory of the Agency.

AMENDATORY SECTION RULE 1.2 NAME OF AGENCY

The name of the multi-county air pollution control authority comprised of the activated or inactivated air pollution control authorities of Clallam County, Grays Harbor County, Jefferson County, Mason County, Pacific County, and Thurston County (~~shall~~) will be known and cited as the "Olympic Region Clean Air Agency."

AMENDATORY SECTION RULE 1.4 DEFINITIONS

When used in regulations of the Olympic Region Clean Air Agency, the following definitions (~~shall~~) will apply, unless defined otherwise in individual Regulations:

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

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

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

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

"**Agency**" shall mean the same as "Authority."

"**Agriculture or Agricultural ((Operation))**" means the growing of crops, the raising of fowl or animals as gainful occupation.

"**Air Contaminant**" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

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

(~~"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.~~)

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

(a) The applicable standards as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or (~~;~~),

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

"Alteration" means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

"Ambient Air" means the surrounding outside air.

"Ambient Air Quality Standard" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which ~~((shall))~~ must not be exceeded.

~~("Ancillary" for the purpose of defining "stationary source" or "source," means "related.")~~

~~"Approval Order" is defined in "order of approval.")~~

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

"Authority" means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

~~("Authorized Permitting Agent" means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.)~~

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

"Best Available Control Technology (BACT)" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70A.~~((94))15~~ RCW emitted from or which results from any new or modified stationary source which the permitting agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event ~~((shall))~~ must application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph ~~((shall))~~ must not be allowed to increase above levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

"Board" means the Board of Directors of the Olympic Region Clean Air Agency.

"Bubble" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70A.~~((94))15~~.~~((155))2240~~ and Rule 6.1.12 of Regulation 6.

"Commenced" as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

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

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

For ~~((the purpose of))~~ this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

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

"Control Apparatus" means any device that prevents or controls the emission of any air contaminant.

~~("Control Officer" means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer.")~~

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

"Criteria Pollutant" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

"Daylight Hours" means the hours between official sunrise and official sunset.

"Ecology" means the Washington State Department of Ecology.

"Emission" means a release of air contaminants into the ambient air.

"Emission Point" means the location (place in horizontal plane~~((†))~~ and vertical elevation) at which an emission enters the atmosphere.

"Emission reduction credit (ERC)" means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

"Emission Standard" and "Emission Limitation" means requirements established under the Federal Clean Air Act or chapter 70A.~~((94))15~~ RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work

practice, or operational standard adopted under the Federal Clean Air Act, chapter 70A.~~((94))~~15 RCW.

"**Emission Unit**" means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70A.~~((94))~~15 or 70A.~~((98))~~388 RCW.

"**EPA**" means the United States Environmental Protection Agency (USEPA).

"**Equipment**" means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

"**Establishment**" means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

"**Excess Emission**" means emissions of an air pollutant ~~((in excess of an))~~ more than the applicable emission standard.

"**Executive Director**" means the Air Pollution Control Officer of the Olympic Region Clean Air Agency.

"**Facility**" means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

"**Federal Clean Air Act (FCAA)**" means the Federal Clean Air Act, as 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.

"**Federally Enforceable**" means all limitations and conditions ~~((which are))~~ enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

"**Fuel Burning Equipment**" means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

"**Fugitive Dust**" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

"**Fugitive Emission**" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"**Garbage**" means refuse, animal, or vegetable matter as from a kitchen, restaurant, or store.

"**Good Engineering Practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

"**Hogged-fuel**" means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and ~~((also))~~ includes shavings from planing mills, sawdust from saw-kerfs, bits of bark, chips,

and other small-recovered products from the manufacture of wood products or any combination thereof.

"**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

"**In Operation**" means engaged in activity related to the primary design function of the source.

"**Installation**" means the act of installing, which means placing, assembling, or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

"**Light Detection and Ranging (LIDAR)**" means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR.

"**Lowest Achievable Emission Rate (LAER)**" means the same as it is defined in WAC 173-400-810. ~~((means for any stationary source that rate of emissions which reflects the more stringent of:~~

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

~~(b) The most stringent emission limitation that is achieved in practice by such class or category of stationary source.~~

~~In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.)~~

"**Major Modification**" as it applies to stationary sources subject to requirements for new sources in nonattainment areas means the same as it is defined in WAC 173-400-810. ~~((is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:~~

~~(a) Nonattainment Areas. "Major Modification" as it applies in nonattainment areas means any physical change or change in method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.~~

~~(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

~~(2) A physical change or change in method of operation shall not include:~~

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

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

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

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

~~(v) Use of an alternative fuel or raw material by a stationary source which: The stationary source was capable of~~

accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;

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

(vii) Any change in ownership at a stationary source.

(viii) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

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

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated:

(b) Attainment or unclassified areas. "Major Modification" as it applies in attainment or unclassified areas means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

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

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

(i) Routine maintenance, repair and replacement;

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

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

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

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

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

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

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

(vii) Any change in ownership at a stationary source.

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

(A) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that stationary source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

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

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

"Major Stationary Source" (a) as it applies to stationary sources subject to requirements for new sources in **nonattainment areas** means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in **attainment or unclassified areas** means the same as it is defined in WAC 173-400-710. ((is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:

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

(i) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀;

(ii) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary

sources contribute significantly to carbon monoxide levels in the area:

(2) Any physical change that would occur at a stationary source not qualifying under (b)(1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.

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

(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the stationary source is a major stationary source due to (b)(1)(i) or (b)(1)(ii) of this rule:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 of 113 of the Federal Clean Air Act.

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

(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:

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

- (i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (ii) Coal cleaning plants (with thermal dryers);
- (iii) Kraft pulp mills;
- (iv) Portland cement plants;
- (v) Primary zinc smelters;
- (vi) Iron and steel mill plants;
- (vii) Primary aluminum ore reduction plants;
- (viii) Primary copper smelters;
- (ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (x) Hydrofluoric, sulfuric, and nitric acid plants;
- (xi) Petroleum refineries;
- (xii) Lime plants;
- (xiii) Phosphate rock processing plants;
- (xiv) Coke oven batteries;
- (xv) Sulfur recovery plants;
- (xvi) Carbon black plants (furnace process);
- (xvii) Primary lead smelters;
- (xviii) Fuel conversion plants;
- (xix) Sintering Plants;
- (xx) Secondary metal production plants;
- (xxi) Chemical process plants;
- (xxii) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiv) Taconite ore processing plants;
- (xxv) Glass fiber processing plants; and
- (xxvi) Charcoal production plants.

(2) Regardless of the stationary source size specified in (b)(1) of this rule, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(1) or (b)(2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.

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

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;

- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (xxvii) Any other stationary source category, which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

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

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

"**Material Handling**" means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

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

"**National Ambient Air Quality Standards (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

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

"**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

"**Net Emissions Increase**" (a) as it applies to stationary sources subject to requirements for new sources in nonattainment areas means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in attainment or unclassified areas means the same as it is defined in WAC 173-400-710. ((is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:

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

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

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

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

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

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

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

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

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

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

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

(iii) It has approximately the same qualitative significance to the increase from the particular change; and

(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule or a SIP approved nonattainment area new source review regulation;

or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

~~(6) An increase that results from a physical change at a stationary source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.~~

~~(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:~~

~~(1) The amount by which the sum of the following exceeds zero:~~

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

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

~~(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.~~

~~(3) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the stationary source, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀.~~

~~(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(6) A decrease in actual emissions is creditable only to the extent that:~~

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

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

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

~~(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.)~~

"New Source" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted

by such stationary source or that results in the emission of any air contaminant not previously emitted; and

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

"New Source Performance Standards (NSPS)" means the federal rules set forth in 40 CFR Part 60.

"Nonattainment Area" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

"Nonroad Engine" means:

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

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

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

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

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

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

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is a single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

"Notice of Construction Application" means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

~~("Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.)~~

"Olympic Air Pollution Control Authority (OAP CA)" is the former name of Olympic Region Clean Air

Agency (ORCAA). Reference to "OAPCA" (~~(shall)~~) means the same as ORCAA.

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

"**Order**" means any order issued by ecology or a local air agency pursuant to chapter 70A.~~((94))15~~ RCW, including, but not limited to RCW 70A.~~((94))15~~.~~((332))3011~~, 70A.~~((94))15~~.~~((211))2520~~, 70A.~~((94))15~~.~~((152))2210~~, 70A.~~((94))15~~.~~((153))2220~~, and 70A.~~((94))15~~.~~((144))2040(3)~~, and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

"**Order of Approval**" or "**Approval Order**" means a regulatory order issued by Ecology of the Agency to approve the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

"**Owner**" means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

"**Ozone Depleting Substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

"**Particulate Matter**" or "**Particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"**Parts Per Million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

"**Permit**" means a written warrant or license granted by the Board, (~~(Control Officer))~~ Executive Director, or duly authorized Representative or Agent.

"**Permitting Agency**" means ecology or the local air pollution control agency with jurisdiction over the source.

"**Person**" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

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

"**PM₁₀**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

"**PM_{2.5} Emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

"**PM₁₀ Emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an

aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

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

"**Prevention of Significant Deterioration (PSD)**" means the program in WAC 173-400-~~((144))700~~ to 173-400-750. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. (~~(Contact Ecology at (360) 407-6800 for more information.))~~)

"**Process**" means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or method, leading to an end of a (~~(particular))~~) performance, or manufacturing production.

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

"**Refuse**" means waste as defined in Rule 1.4 of this Regulation.

"**Regulation**" means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

"**Regulatory Order**" means an order issued by Ecology or an (~~(A))~~ agency to an air contaminant source that applies to that source, any applicable provision of chapter 70A.~~((94))15~~ RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

"**Representative**" or "**Agent**" means any person authorized by the (~~(Control Officer))~~ Executive Director of the Agency to represent (~~(him))~~) them in an official and specific manner.

"**Residential**" means a two or single-family unit.

"**Secondary Emissions**" means emissions which would occur because (~~(as a result))~~) of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined,

quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

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

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

"Significant" (a) as it applies to stationary sources subject to requirements for new sources in **nonattainment areas** means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in **attainment or unclassified areas** means the same as it is defined in WAC 173-400-710. ((is defined depending on the attainment status of the area:

(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM 10:	15 tpy

(b) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:

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

Pollutant and Emissions Rate	
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter (PM)	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds	40 tpy
Fluorides	3 tpy
Lead	0.6 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy

Pollutant and Emissions Rate	
Municipal waste combustor organics (measured as total tetra through octa chlorinated dibenzo p dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	45 megagrams per year (50 tpy)
Ozone depleting substances (in effect on July 1, 2000)	100 tpy

(2) In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

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

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

"Source Category" means all sources of the same type of classification.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

"Stack Height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

"**Standard Conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

"**Standard Cubic Foot of Gas**" means that amount of the gas, which would occupy a cube having dimensions of one foot on each side(;) if the gas were free of water vapor and at standard conditions.

~~("State Act" means the Washington Clean Air Act, chapter 70.94 RCW, as amended.)~~

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

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

"**Synthetic Minor**" means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

"**Temporary**" means a period ~~((of time))~~ not to exceed one (1) year.

"**Total Reduced Sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide.

"**Total Suspended Particulate (TSP)**" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

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

"**True Vapor Pressure**" means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

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

"**United States Environmental Protection Agency (USEPA)**" ~~((shall))~~ will be referred to as EPA.

"**Vent**" means any opening through which gaseous emissions are exhausted into the ambient air.

"**Volatile Organic Compound (VOC)**" means the same as it is defined in WAC 173-400-030. ~~((any carbon compound that participates in atmospheric photochemical reactions.~~

~~(a) Exceptions. The following compounds are not a VOC:~~

Acetone;
carbon monoxide;
carbon dioxide;
carbonic acid;
~~metallic carbides or carbonates;~~
~~ammonium carbonate;~~
~~dimethyl carbonate;~~
~~propylene carbonate;~~
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1 trichloroethane (methyl chloroform);
1,1,2 trichloro 1,2,2 trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2 dichloro 1,1,2,2 tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1 trifluoro 2,2 dichloroethane (HCFC-123);
1,1,1,2 tetrafluoroethane (HCFC-134a);
1,1 dichloro 1 fluoroethane (HCFC-141b);
1 chloro 1,1 difluoroethane (HCFC-142b);
2 chloro 1,1,1,2 tetrafluoroethane (HCFC-124);
pentafluoroethane (HFC-125);
1,1,2,2 tetrafluoroethane (HFC-134);
1,1,1 trifluoroethane (HFC-143a);
1,1 difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
perchloroethylene (tetrachloroethylene);
3,3 dichloro 1,1,1,2,2 pentafluoropropane (HCFC-225ea);
1,3 dichloro 1,1,2,2,3 pentafluoropropane (HCFC-225eb);
1,1,1,2,3,4,4,5,5,5 decafluoropentane (HFC-43-10mee);
difluoromethane (HFC-32);
ethylfluoride (HFC-161);
1,1,1,3,3,3 hexafluoropropane (HFC-236fa);
1,1,2,2,3 pentafluoropropane (HFC-254ea);
1,1,2,3,3 pentafluoropropane (HFC-245ea);
1,1,1,2,3 pentafluoropropane (HFC-245eb);
1,1,1,3,3 pentafluoropropane (HFC-245fa);
1,1,1,2,3,3 hexafluoropropane (HFC-236ea);
1,1,1,3,3 pentafluorobutane (HFC-365mfe);
chlorofluoromethane (HCFC-31);
1 chloro 1 fluoroethane (HCFC-151a);
1,2 dichloro 1,1,2 trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4 nonafluoro 4 methoxy butane (C₄F₉OCH₃);
2 (difluoromethoxymethyl) 1,1,1,2,3,3,3 heptafluoropropane ((CF₃)₂CF₂CF₂OCH₃);

1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane
($C_4F_9OC_2H_5$);

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2(CFCF_2OC_2H_5)$);

methyl acetate and perfluorocarbon compounds which fall into these classes:

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

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

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

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

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

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

Reviser's note: 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.

AMENDATORY SECTION

RULE 1.5 ~~((CONTROL OFFICER)) EXECUTIVE DIRECTOR—~~ POWERS AND DUTIES

(a) ~~The ((Control Officer)) Executive Director shall observe and enforce the provisions of state law and all orders, ordinances, resolutions or rules and regulations of the Agency pertaining to control and prevention of air pollution in accordance with the policies of the Board of Directors.~~

(b) ~~At least thirty days prior to the commencement of any formal enforcement action under RCW 70A.~~((94))15.~~((430))3150~~ or 70A.~~((94))15.~~((431))3160~~, whenever the ((Control Officer)) Executive Director has reason to believe that any provision of state law or any regulation relating to the control or prevention of air pollution has been violated, the ((Control Officer)) Executive Director may cause written notice to be served upon the alleged violator or violators. The notice ~~((shall))~~ must specify the provision of state law or the regulation alleged to be violated and the facts alleged to constitute a violation there of and may include an order that necessary corrective action be taken within a specified time. In lieu of an order, the ((Control Officer)) Executive Director may require that the alleged violator or violators appear before the Board for a hearing, at a time and place specified in the notice, given at least twenty (20) days prior to such hearing, and answer the charges.~~~~~~

(c) ~~The ((Control Officer)) Executive Director and/or a qualified designated agent may make any investigation or~~

~~study which is necessary for ((the purpose of)) enforcing these Regulations or any amendment thereto of controlling or reducing the amount or kind of air contaminant.~~

(d) ~~The ((Control Officer)) Executive Director and/or a qualified designated agent may obtain from any person, subject to the jurisdiction of the Agency, such information or analysis as will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by such source and type or nature of control equipment in use.~~

(e) ~~((For the purposes of)) To ((investigating)) investigate conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the ((Control Officer)) Executive Director or a duly authorized representative ~~((shall have))~~ has the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person ~~((shall))~~ may refuse entry or access to the ((Control Officer)) Executive Director, or a duly authorized representative, who request entry for ~~((the purpose of))~~ an inspection, and who presents appropriate credentials; nor ~~((shall any person))~~ obstruct, hamper, or interfere with any such inspection ~~((by the Control Officer, or a duly authorized representative)).~~~~

(f) ~~If during the course of an inspection, the ((Control Officer)) Executive Director or a duly authorized representative desires to obtain a sample of air contaminant, fuel, or process material or other material which affects or may affect the emission of air contaminants, the ((Control Officer)) Executive Director or a designated agent shall notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and the ((Control Officer)) Executive Director or a duly authorized representative shall give a receipt to the owner or operator for the sample obtained.~~

(g) ~~The ((Control Officer)) Executive Director may engage, at the Agency's expense and with Board approval, qualified individuals, or firms to make independent studies and reports as to the nature, extent, quantity, or degree of any air contaminants which are or may be discharged from any source.~~

(h) ~~The ((Control Officer)) Executive Director is empowered to sign official complaints or issue citations or initiate court suits or use other means to enforce the provisions of the Regulations.~~

(i) ~~((In order to))~~ To demonstrate compliance with emission standards, the ((Control Officer)) Executive Director ~~((shall have))~~ has the authority to require a source to be tested, either by the Agency personnel or by the owner, using source test procedures approved by the Agency. The owner ~~((shall))~~ must be given reasonable advance notice of the requirement of the test.

(j) ~~((In order to))~~ For Agency personnel to perform a source test, the ((Control Officer)) Executive Director ~~((shall have))~~ has the authority to require the owner of the source to provide an appropriate platform and sampling ports. The owner ~~((shall))~~ must have the opportunity to observe the sampling and, if there is adequate space to conduct the tests safely and efficiently, to obtain sample at the same time.

AMENDATORY SECTION**RULE 1.6 CONFIDENTIAL INFORMATION**

Whenever any record or other information, other than ambient air quality data or emissions data, furnished to or obtained by the Agency, pursuant to any sections in chapter 70A.~~((94))~~15 RCW, relate to processes or production unique to the owner or operator or are likely to affect adversely the competitive position of such owner or operator if released to the public or to the competitor, and the owner or operator of such processes or production so certifies, such records or information ~~((shall be))~~ will only be for the confidential use of the Agency.

Nothing herein ~~((shall))~~ will be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this rule: Provided further, that emission data furnished to or obtained by the Agency ~~((shall))~~ will be correlated with applicable emission limitations and other control measures and ~~((shall))~~ will be available for public inspection during normal business hours at offices of the Agency.

AMENDATORY SECTION**RULE 1.7 APPOINTMENT OF HEARING OFFICER**

(a) In all instances where the Board is permitted or required to hold hearings under the provisions of chapter 70A.~~((94))~~15 RCW, such hearings ~~((shall))~~ must be held before the Board; or the Board may appoint a hearing officer, who ~~((shall))~~ will be the Executive Director of the Agency or his/her designee to hold such hearings.

(b) A duly appointed hearing officer ~~((shall have))~~ has all the powers, rights and duties of the Board relating to the hearings.

AMENDATORY SECTION**RULE 1.8 APPEALS FROM BOARD ORDERS**

(a) Any order issued by the Agency ~~((shall))~~ becomes final unless such order is appealed to the Hearings Board as provided in chapter 43.21B RCW. The sole basis for appeal of a fee assessed by the ~~((Control Officer))~~ Executive Director or Board ~~((shall))~~ will be that the assessment contains an arithmetic or clerical error.

(b) Any order issued by the Agency may be appealed to the Pollution Control Hearings Board if the appeal is filed with the Hearings Board and served on the Agency within thirty (30) days after receipt of the order in accordance with chapter 371-08 WAC. This is the exclusive means of appeal of such an order.

(c) The Agency in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(d) At any time during the pendency of such an appeal of such an order to the Pollution Control Hearings Board, the appellant or other affected parties may apply to the Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC for a stay of the order or the removal thereof.

AMENDATORY SECTION**RULE 1.9 SEVERABILITY**

If any phrase, clause, or rule of these Regulations ~~((shall be))~~ is declared unconstitutional or invalid by any court of competent jurisdiction, it ~~((shall))~~ will be conclusively presumed that the Board of Directors would have enacted these Regulations without the phrase, clause, or rule so held unconstitutional or invalid; and the remainder of the Regulations ~~((shall))~~ will not be affected ~~((as a result))~~ because of said part being held unconstitutional or invalid.

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.

AMENDATORY SECTION**RULE 1.10 SERVICE OF NOTICE**

(a) Service of any written notice required by ORCAA Regulations ~~((shall))~~ must be made on the owner(s) as follows:

(1) Either by mailing the notice in a prepaid envelope directed to the owner at the address listed on their application, order, registration certificate, or at the address where the equipment is located, by United States Certified Mail, return receipt requested; or

(2) By leaving the notice with the owner or if the owner is not an individual, with a member of the partnership or ~~((other))~~ group concerned, or with an officer, registered agent or managing agent of the corporation.

(b) Service of any written notice required by ORCAA Regulations ~~((shall))~~ must be made on the Agency, as follows:

(1) Either by mailing the notice in a prepaid envelope directly to the Agency at its office by United States Certified Mail, return receipt requested; or

(2) By leaving the notice at the Agency office with an employee of the Agency.

AMENDATORY SECTION**RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date ~~((shall be))~~ is July 1, 2021.

NEW SECTION**RULE 1.12 STATE REGULATIONS REFERENCE DATE**

Whenever state regulations are referenced in ORCAA's rules, the effective date is July 1, 2021.

AMENDATORY SECTION**RULE 2.1 VOLUNTARY COMPLIANCE**

Nothing in this Regulation ~~((shall))~~ prevents the Agency from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

AMENDATORY SECTION**RULE 2.3 VARIANCES**

Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the Agency or the Board for a variance to exceed a specific maximum emission standard of these Regulations for

a limited period ~~((of time))~~, except for any federally enforceable standard, provided that a variance to state standard is also approved by the Department of Ecology. The application ~~((shall))~~ must be accompanied by such information and data as the ~~((Control Officer))~~ Agency or Board ~~((may))~~ requires. The Board may grant such variance but only after approval by the Department of Ecology and public hearing or due notice and in accordance with the provisions set forth in RCW 70A.~~((94))15.~~~~((181))2310~~, as now or hereafter amended. Any hearing held pursuant to this rule ~~((shall))~~ must be conducted in accordance with the rules of evidence as set forth in RCW 34.04.100, as now or hereafter amended. A variance ~~((shall))~~ will be charged fees ~~((according to))~~ per the Agency's Notice of Construction Fee Schedule.

AMENDATORY SECTION

RULE 2.4 NOTICES OF VIOLATIONS

At least 30 days prior to the commencement of any formal enforcement action under RCW 70A.~~((94))15.~~~~((430))3150~~ or 70A.~~((94))15.~~~~((431))3160~~, the Board or ~~((Control Officer))~~ Executive Director ~~((shall cause))~~ will serve written notice ~~((to be served))~~ upon the alleged violator or violators. The notice ~~((shall))~~ must specify the provisions of chapter 70A.~~((94))15~~ RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the ~~((Control Officer))~~ Executive Director may require ~~((that))~~ the alleged violator or violators appear before the Board for a hearing. Every notice of violation ~~((shall))~~ will offer ~~((to))~~ the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(a) Each act of commission or omission which procures, aids, or abets in the violation ~~((shall be considered))~~ is a violation and ~~((be))~~ is subject to the same penalty.

(b) In case of a continuing violation, whether ~~((or not))~~ knowingly committed, each day's continuance ~~((shall be))~~ is a separate and distinct violation.

AMENDATORY SECTION

RULE 2.5 REGULATORY ACTIONS AND PENALTIES

The ~~((Control Officer))~~ Executive Director may take any of the following regulatory actions to enforce the provisions of chapter 70A.~~((94))15~~ RCW or any of the rules or regulations in force pursuant thereto, which are incorporated by reference.

(a) Civil Penalties

(1) Any person who violates any of the provisions of chapter 70A.~~((94))15~~ RCW or any of the rules or regulations in force pursuant thereto may incur a civil penalty in an amount not to exceed \$14,915.00 per day for each violation.

(2) Any person who fails to ~~((take))~~ act~~((ion))~~ as specified by an Order issued pursuant to chapter 70A.~~((94))15~~ RCW or Regulations of ~~((the Olympic Region Clean Air Agency))~~ ORCAA~~((shall be))~~ is liable for a civil penalty of not more than \$14,915.00 for each day of continued noncompliance.

(3) Within 30 days after receipt of Notice of Civil Penalty, the person incurring the penalty may apply in writing to

the ~~((Control Officer))~~ Executive Director for the remission or mitigation of the penalty. Any such request must contain the following:

(i) The name, mailing address, and telephone number of the appealing party;

(ii) A copy of the Notice of Civil Penalty appealed from;

(iii) A short and plain statement showing the grounds upon which the appealing party considers such Order to be unjust or unlawful;

(iv) A clear and concise statement of facts upon which the appealing party relies to sustain ~~((his or her))~~ their grounds for appeal;

(v) The relief sought, including the specific nature and extent; and

(vi) A statement that the appealing party has read the notice of appeal and believes the contents to be true followed by the party's signature.

Upon receipt of the application, the ~~((Control Officer))~~ Executive Director may remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(4) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition of the application for relief from penalty.

(5) A civil penalty ~~((shall))~~ becomes due and payable on the later of:

(i) 30 days after receipt of the notice imposing the penalty;

(ii) 30 days after receipt of the notice of disposition on application for the relief from penalty, if such application is made; or

(iii) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(6) If the amount of the civil penalty is not paid to the Agency within the time allowed ~~((30 days after it becomes due and payable))~~, the Agency may use any available methods, including Superior Court, to recover the penalty. In all actions brought in the Superior Court for recovery of penalties hereunder, the procedure and rules of evidence ~~((shall be))~~ are the same as in ordinary civil action.

(7) To secure the penalty incurred under this rule, this Agency ~~((shall have))~~ may secure a lien on any vessel used or operated in violation of these Regulations, which ~~((shall))~~ will be enforced as provided in RCW 60.36.050.

(b) Criminal Penalties

(1) Any person who knowingly violates any of the provisions of chapter 70A.~~((94))15~~ RCW or any rules or regulations in force pursuant thereto, ~~((shall be))~~ is guilty of a crime and upon conviction thereof, ~~((shall))~~ may be punished by fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with terms

of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm ~~((shall be))~~ is guilty of a crime and ~~((shall))~~ may, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that they have thereby placed another person in imminent danger of death or substantial bodily harm ~~((shall be))~~ is guilty of a crime and ~~((shall))~~ may, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 year, or both.

(c) Additional Enforcement

(1) 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 chapter 70A.~~((94))~~15 RCW, or any order, rule or regulation issued by the Board of ~~((Control Officer))~~ Executive Director or a duly authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the Superior Court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(2) As an additional means of enforcement, the Board or ~~((Control Officer))~~ Executive Director may accept an assurance of discontinuance of any act or practice deemed in violation of chapter 70A.~~((94))~~15 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance ~~((shall))~~ must specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance ~~((shall))~~ constitutes prima facie proof of a violation of this chapter or the orders, rules or regulations issued pursuant thereto, which make the alleged act or practice unlawful for ~~((the purpose of))~~ securing any injunction or other relief from Superior Court in the county wherein the violation is alleged to be occurring or to have occurred.

AMENDATORY SECTION

RULE 2.6 COMPLIANCE SCHEDULES

(a) Issuance. Whenever a source is found to be in violation of an emission standard or other provision of ORCAA's Regulations or chapter 70A.~~((94))~~15 RCW or title 173 WAC or any applicable federal regulation the Agency may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order ~~((shall))~~ must contain a schedule for installation, with intermediate benchmark dates and a ~~((final))~~ completion date, which ~~((shall))~~ constitutes a compliance schedule.

(b) The source, including any person who owns or is in control of any plant, building, structure, establishment, process, or equipment, which is in violation of an emission standard or other provision of ORCAA's Regulations or chapter 70A.~~((94))~~15 RCW or title 173 WAC may submit a proposed Compliance Schedule to the Board for approval. The pro-

posed Compliance Schedule must meet the requirements of this rule ~~((;))~~ and ~~((shall))~~ must be accompanied by such information and data as the ~~((Control Officer))~~ Executive Director or the Board may require.

(c) Public Noticing. ~~((;))~~ Compliance Schedules must meet the requirements for public involvement in accordance with chapter 70A.~~((94))~~15 RCW as now or hereafter amended. Any hearing held pursuant to this rule ~~((shall))~~ must be conducted in accordance with the Rules of Evidence as set forth in Chapter ~~((RCW))~~ 34.04~~((;100))~~ RCW, as now or hereafter amended.

(d) Federal Action. A source ~~((shall))~~ will be considered ~~((to be))~~ in compliance with this rule if all the provisions of its individual compliance schedule, including those stated by regulatory order, are being met. Such compliance does not preclude federal enforcement action by the EPA until and unless the schedule is submitted and adopted as an amendment to the State Implementation Plan.

(e) Penalties for delayed compliance. Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act. In addition, failure at any phase to make progress towards compliance pursuant to any Compliance Schedule accepted by the Board ~~((shall))~~ may be deemed an unreasonable delay and in violation of the terms of said Compliance Schedule and the Board or ~~((Control Officer))~~ Executive Director may require that the responsible person appear before the Board to explain the delay and show cause why abatement action should not be started, enforcement action taken, and/or the Compliance Schedule revoked.

(f) Fee for Compliance Schedule. The Agency ~~((shall))~~ will not commence processing a compliance schedule request until it has received a filing fee as determined by Rule 3.3.

AMENDATORY SECTION

REGULATION 3 - FEES

The Board ~~((shall))~~ will establish Fee Schedules by Resolution. The Fee Schedules ~~((shall))~~ will be reviewed periodically to determine if the fee revenue collected is sufficient to recover program costs. Any proposed fee revision ~~((shall))~~ must include opportunity for public review and comment. Accordingly, the Agency ~~((shall))~~ must account for program costs, including direct and indirect employee costs and overhead. If it is determined that the total program fee revenue is either significantly excessive or deficient for this purpose, the Board may choose to amend the fee schedules to recover program costs more accurately ~~((recover program costs))~~.

AMENDATORY SECTION

RULE 3.1 ANNUAL REGISTRATION FEES

(a) The Agency ~~((shall))~~ will charge Initial and Annual registration fees pursuant to RCW 70A.~~((94))~~15.~~((;15))~~2200. Annual registration fees ~~((shall))~~ will be assessed ~~((according to))~~ per the annual fee schedules set forth in Rule 3.1(b) below. Initial registration fees ~~((shall))~~ will be assessed upon initial registration of a source and ~~((shall))~~ will equal the annual registration fee based on projected emissions and prorated for the remaining months in the fiscal year. Initial and Annual registration fees ~~((shall))~~ will provide revenue to fund the Agency's ongoing Registration Program.

(b) All sources requiring registration ~~((shall))~~ will be assessed an annual registration fee; the fees required by this rule ~~((shall))~~ will be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency, ~~((provided that,))~~ if this information is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates. ~~((For the purpose of))~~ In assessing annual registration fees, the Agency ~~((shall))~~ will consider updates and revisions to any source's file received prior to July 1 of the current year. The fees ~~((shall))~~ will be assessed ~~((according to))~~ per items (1) and (2) of this rule. Sources assessed annual operating permit fees under Rule 3.2 ~~((shall))~~ will not be assessed annual fees under this rule.

(1) An Emissions Fee as specified in the Registration Fee Schedule per ton of each air contaminant listed in Table 3.1 that is emitted by the source. The emissions fee ~~((shall))~~ will be based on actual emissions from the source, for the last calendar year when available, or as specified in the file or permit. Only non-VOC TAPs will be subject to the emission fee; and

(2) A Registration Classification Fee as specified in the Registration Fee Schedule.

(c) The Agency ~~((shall))~~ sends annual registration invoices out on or after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing July 1 and ending June 30. The agency ~~((shall))~~ assesses annual registration fees based on the most recent information on file with the Agency including any updates to the source's file received prior to July 1 of that year.

(d) Upon assessment by the Agency, annual registration fees are due and payable and ~~((shall))~~ will be deemed delinquent if not fully paid ~~((within thirty (30) days))~~ on or before the due date on the invoice. However, sources classified as RC1, RC2, or RC3 ~~((shall be given))~~ have the option to pay their annual fee in quarterly installments. RC1, RC2, and RC3 sources ~~((may choose))~~ choosing to pay ~~((their annual fees in))~~ quarterly installments may ~~((by))~~ indicate~~((ing))~~ so on the first invoice received and remit~~((ting))~~ payment of the first installment to the Agency along with the duplicate copy of the invoice. Quarterly installments ~~((shall be))~~ are equal to 25% of the total annual registration fee and ~~((shall be))~~ are due ~~((within 30 days of each quarter following initial assessment by the Agency))~~ on or before the due date on the invoice.

(e) Any source which fails to pay, in full, their annual registration fee or annual registration installment by the due date, as stated on the invoice, ~~((shall))~~ may be assessed a late penalty in the amount of 25% of their annual registration fee. This late penalty ~~((shall be))~~ is in addition to the annual registration fee.

(f) Annual registration fees may be appealed ~~((according to))~~ per the procedure specified in Rule 1.8.

(g) Failure to pay annual registration fees is a violation of these Regulations and will result in the issuance of a Notice of Violation and prescribed penalties.

(h) On a periodic basis, the Agency ~~((shall))~~ conducts a workload analysis to determine the adequacy of annual registration fees in funding the Agency's Registration Program.

The workload analysis ~~((shall be))~~ is based on the Agency's historical record of time and resource expenditures associated with the registration program. The workload analysis ~~((shall))~~ will be presented to the Board periodically. Any proposed revisions to the annual registration fee schedule ~~((shall))~~ must be presented to the Board for adoption after public noticing pursuant to these Regulations public noticing requirements and opportunity for a public hearing.

(i) All registered sources needing to be re-inspected, due to verified conditions or actions caused by the source, will be charged an additional amount as specified in the Registration Fee Schedule.

(j) The Agency's Registration fees ~~((shall be sufficient to))~~ must cover the direct and indirect cost of the Registration program as specified in RCW 70A ~~((94))15~~ ~~((151))2200~~.

(k) The applicable fees ~~((shall be))~~ are established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

Table 3.1: Pollutants Considered For Fees

Total Suspended Particulates (TSP)
Carbon Monoxide (CO)
Sulfur Oxides (SOx)
Nitrogen Oxides (NOx)
Volatile Organic Compounds (VOC)
Toxic Air Pollutants (TAP)

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 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.

**AMENDATORY SECTION
RULE 3.2 OPERATING PERMIT FEES**

(a) Fee Applicability. Any source or area source in the Agency's jurisdiction subject to the requirement to obtain an Operating Permit pursuant to 40 CFR Part 70 or RCW 70A ~~((94))15~~ ~~((161))2260~~ (Title V sources), except those Title V sources for which air emissions are regulated by the Washington State Department of Ecology or Energy Facility Site Evaluation Council (EFSEC), ~~((shall))~~ must pay annual fees to the Agency ~~((according to))~~ per the provisions in this rule.

(b) Operating Permit Program Account. The Agency ~~((shall))~~ must maintain a dedicated account for the Air Operating Permit Program. The account ~~((shall))~~ will be funded exclusively by fee revenue from annual fees collected from Title V sources within the jurisdiction of the Agency. All fee revenue collected under Rule 3.2 ~~((shall))~~ must be deposited in the Air Operating Permit account.

(c) Operating Permit Program Funding. The sum of fees assessed by the Agency under Rule 3.2 ~~((shall be sufficient to))~~ covers all direct and indirect costs of developing and administering the Agency's Operating Permit Program including Ecology's cost for development and oversight of

the Agency's Operating Permit Program, as provided in RCW 70A.~~((94))15.~~~~((462))2270.~~

(d) Ecology Development and Oversight Fees. The Agency ~~((shall))~~ assesses an annual Ecology Development and Oversight Fee to all Title V sources within the jurisdiction of the Agency. The total amount of Ecology Development and Oversight Fees assessed annually by the Agency ~~((shall))~~ equals Ecology's annual cost of development and oversight of the Agency's Operating Permit Program, as provided in RCW 70A.~~((94))15.~~~~((462))2270.~~

(e) Annual Fees, Existing Title V Sources. The Agency ~~((shall))~~ assesses an Annual Fee to all existing Title V sources. The total amount of Annual Fees assessed by the Agency to existing Title V sources ~~((shall))~~ must equal the projected net annual cost to administer the Agency's Operating Permit Program during the current fiscal year.

(f) Net Annual Cost Projections. Projected net annual cost to administer the Agency's Operating Permit Program ~~((shall))~~ will be determined annually and ~~((shall))~~ must equal the projected annual cost to administer the program minus any balance of funds in the Operating Permit Program account at the end of the previous fiscal year. Projected annual costs ~~((shall))~~ include all direct and indirect costs to administer the Agency's Operating Permit Program and ~~((shall be))~~ is based on a workload analysis conducted by staff. Net annual cost projections including the workload analysis ~~((shall))~~ must be included in the Agency's annual budget and approved by resolution of the Agency's Board of Directors in a public hearing.

(g) Workload Analysis. Only fee eligible activities as specified below, as provided in RCW 70A.~~((94))15.~~~~((462))2270,~~ ~~((shall be))~~ are considered in the workload analysis conducted annually by staff. Fee eligible activities ~~((shall))~~ will include:

(1) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or permit renewal;

(2) Source inspections, testing, and other data gathering activities necessary for development of a permit, permit revision or renewal;

(3) Acting on an application for a permit, permit revision or renewal, including the cost of developing an applicable requirement as part of the processing of a permit, permit revision

or renewal, preparing a draft permit and fact sheet, preparing a proposed permit, and preparing a final permit;

(4) Notifying and soliciting, reviewing, and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(5) Modeling necessary to establish permit limits or to determine compliance with the permit limits;

(6) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(7) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a source is complying with permit conditions;

(8) Administrative enforcement activities and penalty assessment, excluding the cost of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(9) The share attributable to permitted sources to the development and maintenance of emissions inventories;

(10) The share attributable to permitted sources of the ambient air quality monitoring and associated recording and reporting activities;

(11) Training for permit administration and enforcement;

(12) Fee determination, assessment, and collection, including the cost of necessary administrative dispute resolution and enforcement;

(13) Required fiscal audits, periodic performance audits and reporting activities;

(14) Tracking of time, revenues and expenditures and accounting activities;

(15) Administering the permit program including costs of clerical support, supervision, and management;

(16) Provisions of assistance to small business under jurisdiction of the Agency as required under Section 507 of the Federal Clean Air Act; and,

(17) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(h) Allocation of Fees. The Annual Fee for a Title V source ~~((shall))~~ will be calculated using the following three-part fee allocation equation:

Table 3.2a: Operating Permit Fee Formulas

Annual Fee = Facility Fee + Equipment Fee + Emissions Fee
<p>WHERE:</p> <p>Facility Fee = $(\text{Annual Net Cost} \div 3) \div n$</p> <p>Equipment Fee = $[(\text{Annual Net Cost} \div 3) \div U_{\text{total}}] \times U_{\text{source}}$</p> <p>Emissions Fee = $[(\text{Annual Net Cost} \div 3) \div E_{\text{total}}] \times E_{\text{source}}$</p> <p>Annual Net Cost = Projected net annual cost as approved by the Agency's Board of Directors.</p> <p>n = Total number of Title V sources in the Agency's jurisdiction. Note, each area source category requiring a Title V permit will be counted as one source (for purposes of) in determining "n." However, the facility fee for an area source category will be divided equally among all individual area sources within the area source category.</p> <p>U_{total} = Total number of emission units located at Title V sources in the Agency's jurisdiction.</p> <p>U_{source} = Number of emission units at the specific Title V source. For area source categories requiring a Title V permit, "U_{source}" is the number of individual area sources within the area source category that have been identified within the Agency's jurisdiction. However, the emission unit fee for an area source category will be divided equally among all individual area sources within the area source category.</p> <p>E_{total} = Total actual annual emissions of the air pollutants <u>subject to fees</u> (listed in Table 5.2b, except CO₂) from Title V sources based on the Agency's most recent emissions inventory.</p> <p>E_{source} = Total actual annual emissions of the air pollutants (listed in Table 5.2b, Rule 5.2, except CO₂) <u>subject to fees</u>, from the specific Title V source for the most recent calendar year. For area source categories requiring a Title V permit, "E_{source}" is the total actual annual emissions from the area source category. However, the Emissions Fee for an area source category will be divided equally among all individual area sources within the area source category.</p> <p><u>Air pollutants subject to fees =</u></p> <p><u>Total Particulates (TSP)</u></p> <p><u>Sulfur Oxides (SO_x)</u></p> <p><u>Nitrogen Oxides (NO_x)</u></p> <p><u>Volatile Organic Compounds (VOC)</u></p> <p><u>Toxic Air Pollutants</u></p>

(i) Initial Fees. New Title V sources ~~will~~ be assessed an Initial Fee after commencement of operation to cover the Agency's cost of administering the program for the new Title V source for the remainder of the current fiscal year. The Initial Fee for a new Title V source ~~will~~ equal the Annual Fee based on Rule 3.2(h), which would otherwise be assessed if the Title V source commenced operation on or prior to the beginning of the current fiscal year, prorated by multiplying by the number of months remaining in the current fiscal year divided by 12.

(j) Fee Assessment and Payment Schedule. The Agency ~~sends~~ Annual Fee invoices on or after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing on July 1 and ending on June 30. ~~(Upon receipt of a fee invoice from ORCAA,)~~ Annual Fees are due and payable and ~~will~~ be deemed delinquent if not fully paid ~~(within thirty (30) days)~~ on or before the due date on the invoice. However, option ~~will~~ be given to pay Annual Fees in quarterly installments. Owners or operators may choose to pay their Annual fees in quarterly installments by ~~(indicating so on)~~ signing the (fee) invoice payment addendum received and remit(ting) it with payment of the first quarterly installment (back) to the Agency on or before the due date on the invoice. After initial payment, (These) the remaining installments (shall) must be received (due) on or before October 1, January 1, and April 1 ((following initial payment)). Quarterly install-

ments ~~will~~ be equal to twenty-five percent (25%) of the total fee.

(k) Late Payment. Any Title V source which does not pay the Annual Fee or installment by the Invoice Due date ~~(as posted on the invoice shall)~~ will be assessed a late penalty equal to twenty-five percent (25%) of the ~~(fee amount)~~ balance due. Any penalty ~~will~~ is in addition to the fee ~~(amount due)~~.

(l) Appeal of Annual Fees. Annual Fees may be appealed ~~(according to)~~ per the procedure specified in Rule 1.8. The basis for such appeals ~~will~~ is limited to arithmetic or clerical errors.

(m) Exemption from Rule 3.1 fees. Title V sources assessed annual fees under Rule 3.2 ~~will~~ are not ~~(be)~~ subject to annual Registration Program Fees under Rule 3.1 of Regulation 3.

(n) Transfer of Ownership. Transfer of ownership of a Title V source ~~will~~ does not affect any obligation to pay fees required by Rule 3.2. Any liability for fee payment, including payment of delinquent fees and other penalties ~~will~~ survives any transfer of ownership of a Title V source.

(o) Accountability. The sum of the fees assessed by the Agency to all Title V sources within the Agency's jurisdiction ~~will~~ not exceed the cost of developing and administering the program. The Agency ~~will~~ keeps record of all direct and indirect costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This

information ~~((shall be))~~ is used by the Agency in determining the net annual cost projections required by Rule 3.2(f) above. Provided, however, the information obtained from tracking revenues, time, and expenditures ~~((shall))~~ will not provide a basis for challenge to the amount of an individual source's fee.

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

**AMENDATORY SECTION
RULE 3.3 NOTICE OF CONSTRUCTION FEES**

(a) Fees for processing a Notice of Construction (NOC) application ~~((shall))~~ must include Filing Fees ~~((according to))~~ per Rule 3.3(b) and any applicable Additional NOC Processing Fees ~~((according to))~~ per Rule 3.3(c). Other cost to the agency of work performed outside of the agency in conjunction with approving an NOC application ~~((shall))~~ must be directly reimbursed to the agency ~~((according to))~~ per Rule 3.3(d).

(b) Filing Fees. A Filing Fee ~~((according to))~~ per the Notice of Construction Fee Schedule ~~((shall))~~ must be paid for each proposed piece of equipment or process, or for groups of identical equipment or processes that, if considered individually would be subject to an NOC. Filing Fees ~~((shall))~~ will be assessed and paid as follows:

- (1) An NOC application may not be deemed complete unless initial Filing Fees have been paid in full.
- (2) Equipment or processes may be considered identical and subject to a single filing fee provided:
 - (i) They are identical in size and capacity;
 - (ii) Employ identical air pollution control technology;
 - (iii) Use the same fuel types;
 - (iv) Are subject to the same performance standards and air regulatory determinations; and,
 - (v) May be considered as a single emission~~(s)~~ point for ~~((the purpose of))~~ determining ambient air quality impacts.

(3) Payment of NOC Filing Fees ~~((shall be))~~ is due ~~((no later than))~~ on or before the Invoice Due Date ~~((as posted on the invoice))~~ unless the Executive Director has approved an alternative payment plan ~~((has been approved by the Executive Director))~~.

(c) Additional NOC Processing Fees. Additional NOC Processing Fees ~~((shall))~~ must be paid at a rate as specified in the Notice of Construction Fee Schedule for direct time expended by agency staff working on any of the items or actions described in Table 3.3. If required, additional NOC Processing Fees ~~((shall))~~ will be determined and paid as follows:

(1) Additional NOC Fees may be assessed periodically as work to complete the items in Table 3.3 incurs, but not more frequently than monthly.

(2) All Additional NOC Processing Fees ~~((shall))~~ must be assessed and paid prior to issuing any Final Determination on an NOC application unless the Executive Director has approved an alternative payment plan ~~((has been approved by the Executive Director))~~.

(3) Payment of any Additional NOC Processing Fee ~~((shall be))~~ is due ~~((no later than of))~~ on or before the Invoice Due date ~~((as posted on the invoice))~~ unless the Executive Director has approved an alternative payment plan ~~((has been approved by the Executive Director))~~.

(4) The Executive Director may approve an alternative payment plan ~~((provided that the plan))~~ if a request is submitted in writing by the applicant.

(5) In computing fees based on hourly rates, only hours attributed directly to completing tasks listed in Table 3.3 ~~((shall))~~ will be used in computing fees.

(6) The total hours used in computing fees ~~((shall))~~ will be based on the agency's official time accounting records.

(d) **Other Costs.** The following other costs ~~((shall))~~ must be borne by the applicant and paid prior to issuing any Final Determination on an NOC application unless an alternative payment plan has been approved by the Executive Director:

- (1) The cost of publishing any required notice
- (2) Consulting cost incurred by the agency in conjunction with approving an NOC application.

(e) Late Payment Penalties. Failure to pay, in full, any assessed NOC fee on or before ~~((by))~~ the due date as stated on the invoice, ~~((shall))~~ may incur a late payment penalty in the amount of 25% of the total amount due.

(f) The Agency's NOC fees ~~((shall be sufficient to))~~ cover the direct and indirect cost of processing an NOC application and ~~((shall))~~ will be determined through a workload-driven process as allowed under RCW 70A.~~((94))~~15.~~((152))~~2210.

(g) On a periodic basis, the Agency ~~((shall))~~ reviews the Notice of Construction Fee Schedule based on a workload-driven process and determines if the total actual fee revenue is sufficient to recover program costs as allowed in RCW 70A.~~((94))~~15.~~((152))~~2210. Any proposed fee revision ~~((shall))~~ must be Board approved and ~~((shall))~~ includes opportunity for public review and comment.

(h) The Applicable fee(s) ~~((shall))~~ will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

Table 3.3: Additional NOC Processing Fees

Fee-Eligible Item	Description
NOC Application Assistance	Direct technical assistance completing an NOC application, including, but not limited to calculating emissions, filling out standard forms, determining applicable requirements, completing a BACT analysis, performing an air toxics screening analysis pursuant to chapter 173-460 WAC, or selecting monitoring equipment. An NOC Application Assistance fee may only be assessed if the fee rate is disclosed to the applicant and applicant requests such assistance in writing.

Fee-Eligible Item	Description
Work Exceeding Base-Fee Hours	Direct work attributed to processing an NOC application ((in excess of)) <u>more than</u> the sum of applicable base-fee hours stated in the Notice of construction Fee Schedule for each piece of equipment or process subject to an NOC.
State Environmental Policy Act (SEPA)	SEPA-related work such as reviewing Environmental Checklists, making threshold determinations, preparing Determinations of Nonsignificance (DNS) and other SEPA-related reports.
Public Noticing	Work directly associated with issuing public notice pursuant to WAC 173-400-171 and Rule 6.1.3 ((e)) of ORCAA's Regulations. Associated work includes issuing a press release if warranted, copying, and posting the written Preliminary Determination for public viewing, and reviewing and responding to comments.
Public Hearing	Work associated with conducting a public hearing including, but not limited to, preparation of summary materials, copying, issuing hearing notice, conducting the hearing, and responding to comments

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 section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

RULE 3.4 OUTDOOR BURNING PERMIT FEES

The applicable fee(s) for the following Permits ~~((shall))~~ will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

(a) The fee for an Agricultural Burn Permit is specified in the Outdoor Burning Fee Schedule.

(b) The fee for a Land Clearing Burn Permit is specified in the Outdoor Burning Fee Schedule. The fees ~~((shall be sufficient to))~~ must cover the direct and indirect cost of the Land Clearing Burn Permit program and ~~((shall))~~ will be determined through a workload-driven process.

AMENDATORY SECTION

RULE 3.5 ASBESTOS FEES

The applicable fee(s) for Asbestos and Demolition Notifications ~~((shall))~~ will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

The fees ~~((shall be sufficient to))~~ must cover the direct and indirect ~~c~~~~((d))~~ost of the asbestos program and ~~((shall))~~ will be determined through a workload-driven process.

AMENDATORY SECTION

RULE 3.6 NOTICE OF INTENT TO OPERATE FEES

(a) The submittal of a Notice of Intent to Operate (NOI) ~~((shall))~~ must be accompanied by the appropriate fees as specified in the Notice of Intent Fee Schedule.

(b) The applicable fee(s) ~~((shall))~~ will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

(c) The Agency's fees ~~((shall be sufficient to))~~ must cover the direct and indirect costs of the NOI application process and ~~((shall))~~ will be determined through a workload-driven process.

AMENDATORY SECTION

RULE 4.1 REGISTRATION REQUIRED

(a) All stationary sources within the jurisdiction of the Agency, except for any stationary sources required to obtain an air operating permit under chapter 173-401 WAC, ~~((shall))~~ must be registered with the Agency. Notwithstanding the exemptions provided in Rule 4.1(b), the following stationary sources ~~((shall))~~ must be registered with the Agency:

(1) Any stationary source subject to a standard under New Source Performance Standards, 40 CFR Part 60, except; New Residential Wood Heaters (Subpart AAA); Kraft Pulp Mills (Subpart BB); and Primary Aluminum Reduction Plants (Subpart S);

(2) Any stationary source subject to a performance standard under National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61~~((02))~~, except for asbestos demolition and renovation projects subject to 40 CFR Part 61~~((145))~~ Subpart M;

(3) Any stationary source subject to a performance standard under National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63~~((2))~~;

(4) Any stationary source that includes equipment or control equipment subject to an Approval Order issued by the Agency.

(b) The following stationary sources are exempt from registration requirements under Regulation 4. All stationary sources exempt from registration under Regulation 4 are still required to comply with other applicable air pollution requirements.

Maintenance/construction:

(1) Cleaning and sweeping of streets and paved surfaces;
 (2) Concrete application, and installation;
 (3) Dredging wet spoils handling and placement;
 (4) Paving application and maintenance, excluding asphalt plants;

(5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine housekeeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(6) Plumbing installation and plumbing protective coating application associated with plant maintenance activities;

- (7) Roofing application;
- (8) Insulation application and maintenance, excluding products for resale;
- (9) Janitorial services and consumer use of janitorial products;
- (10) Asphalt laying equipment including asphalt-roofing operations (not including manufacturing or storage);
- (11) Blast cleaning equipment that uses a suspension of abrasives in liquid water;
- (12) Spray painting or blasting equipment used at temporary locations to clean or paint bridges, water towers, buildings, or similar structures.

Storage tanks:

- (13) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;
- (14) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;
- (15) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;
- (16) Process and white-water storage tanks;
- (17) Storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cu ft);
- (18) Storage tanks of a capacity of 10,000 gallons or less, with lids or other appropriate closure, used for the storage of materials containing organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC);
- (19) Storage tanks of a capacity of 40,000 gallons or less, with lids or other appropriate closure, used for storage of organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC), with a true vapor pressure less than 0.01 kPa (0.002 psia) (0.0001 atm);
- (20) Storage tanks of a capacity of 40,000 gallons or less used for the storage of butane, propane, or liquefied petroleum gas;
- (21) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases, and acids;
- (22) Storage tanks used exclusively for storage of diesel fuel;
- (23) Loading and unloading equipment used exclusively for the storage tanks exempted under this rule.

Combustion:

- (24) Fuel burning equipment (not including incinerators) that:
 - (i) is used solely for a private dwelling serving five families or less; or
 - (ii) has a maximum heat input rate of 5 MMBtu/hr or less if burning natural gas, propane, or LPG; or
 - (iii) has a maximum heat input rate of 0.5 MMBtu/hr or less if burning waste-derived fuels; or
 - (iv) has a maximum heat input rate of 1 MMBtu/hr or less if burning recycled or used oil per the requirements of RCW 70A.04.15.0410; or

(v) has a maximum heat input rate of 1 MMBtu/hr or less if burning any other type of fuel and with less than or equal to 0.05% sulfur by weight.

(25) All stationary gas turbines with a rated heat input (~~(=)~~) less than 10 million Btu per hour.

(26) Stationary internal combustion engines having rated capacity:

- (i) (~~(=)~~) less than 50 horsepower output; or
- (ii) (~~(=)~~) less than 500 horsepower and used only for standby emergency power generation.

(27) ~~(A-H-9)~~ Nonroad engines (~~(subject to 40 CFR Part 89)~~).

Material handling:

(28) Storage and handling of water-based lubricants for metal working where organic content of the lubricant is (~~(=)~~) less than 10%;

(29) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallons, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

Water treatment:

(30) Septic sewer systems, not including active wastewater treatment facilities;

(31) NPDES permitted ponds and lagoons used solely for (~~(the purpose of)~~) settling suspended solids and skimming of oil and grease;

(32) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(33) Process water filtration system and demineralizer vents;

(34) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(35) Demineralizer tanks;

(36) Alum tanks;

(37) Clean water condensate tanks;

(38) Oil/water separators, except those at petroleum refineries;

(39) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes;

(40) Municipal sewer systems, including wastewater treatment plants and lagoons with a design capacity of one million gallons per day or less, (~~(provided that)~~) if they do not use anaerobic digesters, chlorine disinfections or sewer sludge incinerators.

Environmental chambers and laboratory equipment:

(41) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(42) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(43) Laboratory fume hoods;

(44) Laboratory calibration and maintenance equipment. Monitoring/quality assurance/testing:

(45) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(46) Hydraulic and hydrostatic testing equipment;

(47) Sample gathering, preparation and management;

(48) Vents from continuous emission monitors and other analyzers.

Miscellaneous:

- (49) Single-family residences and duplexes;
- (50) Plastic pipe welding;
- (51) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
- (52) Insecticide, pesticide, or fertilizer spray equipment;
- (53) Comfort air conditioning;
- (54) Flares used to indicate danger to the public;
- (55) Natural and forced air vents and stacks for bathroom/toilet activities;
- (56) Personal care activities including establishments like beauty salons, beauty schools, and hair cutting establishments;
- (57) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- (58) Tobacco smoking rooms and areas;
- (59) Noncommercial smokehouses;
- (60) Blacksmith forges for single forges;
- (61) Vehicle maintenance activities, not including vehicle surface coating;
- (62) Vehicle or equipment washing;
- (63) Wax application;
- (64) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- (65) Ozone generators and ozonation equipment;
- (66) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- (67) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- (68) Pneumatically operated equipment, including tools and hand-held applicator equipment for hot melt adhesives;
- (69) Fire(-)fighting and similar safety equipment and equipment used to train fire fighters;
- (70) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- (71) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- (72) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm HG @21°C, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);
- (73) Surface coating, aqueous solution or suspension containing ((\leq)) less than 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
- (74) Cleaning and stripping activities and equipment using solutions having ((\leq)) less than 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
- (75) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC;
- (76) Laundry dryers, extractors or tumblers used exclusively for the removal of water from fabric;
- (77) Residential composting facilities;

(78) Restaurants and other retail food preparing establishments;

(79) Routing, turning, carving, cutting, and drilling equipment used for metal, wood, plastics, rubber, leather, or ceramics;

(80) Steam cleaning equipment used exclusively for office or residential housekeeping;

(81) Vacuum cleaning systems used exclusively for office or residential housekeeping;

(82) Vacuum producing devices used in laboratory operations and vacuum producing devices that do not remove or convey air contaminants from or to another source;

(83) Vents used exclusively for:

(i) Sanitary or storm drainage systems; or

(ii) Safety valves.

(84) Washing or drying equipment used for products fabricated from metal or glass, if no volatile organic material is used in the process;

(85) Welding, brazing or soldering equipment;

(86) Coffee roaster with a design capacity less than 10 pounds per batch;

(87) Bark and soil screening operations;

(88) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all crushers less than or equal to 150 tons per hour;

(89) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all crushers less than or equal to 25 tons per hour;

(90) Any portable stationary source approved by the Agency for temporary operation at a single (~~temporary~~) location(s).

AMENDATORY SECTION

RULE 4.2 REGISTRATION PROGRAM

(a) Program purpose. As authorized by RCW 70A.~~((94))~~ 15.~~((15+))~~2200, the Agency's registration program is a program to develop and maintain a current and accurate record of stationary sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify stationary source compliance with applicable air pollution requirements.

(b) Program components. The components of the Agency's registration program (~~shall~~) include:

(1) Initial notification and annual or other periodic reports from owners of stationary sources providing the information described in Rule 4.3.

(2) On-site inspections necessary to verify compliance with applicable air pollution control requirements and/or to supplement information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(3) Maintenance of computers and software used to compile and retrieve information provided by owners of stationary sources relating to air contaminant emissions and compliance with air pollution control requirements.

(4) Compilation of emission inventory reports and computation of emission reduction credits from information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(5) Staff review, including engineering analysis for accuracy and correctness, of information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(6) Clerical and other office support provided by the Agency in direct support of the registration program.

(7) Administrative support provided in directly carrying out the registration program.

(8) Assessment and collection of annual registration fees from all stationary sources requiring registration in accordance with Rule 3.1.

AMENDATORY SECTION

RULE 4.3 REQUIREMENTS FOR STATIONARY SOURCES SUBJECT TO REGISTRATION

(a) The owner or operator of any stationary source subject to registration under Rule 4.1 ~~((shall))~~ must register the stationary source by submitting an initial notification to the Agency of its existence within 30 days from:

(1) Commencement of operation of any new or recommissioned stationary source including those sources subject to prior approval by the Agency through a Notice of Construction under Rule 6.1; or,

(2) Change in ownership of an existing registered stationary source.

(b) Initial notification ~~((shall))~~ must include the following information:

(1) Owner name, address, and phone number;

(2) Source location;

(3) Name, address, and phone number of on-site contact person;

(4) Identification and brief description in terms of type, location and size or capacity, of each stationary source subject to registration;

(5) Date each stationary source was constructed, installed, or established;

(6) Date each stationary source commenced operation;

(7) If subject to pre-construction review and approval by the Agency, the date of the approval and Notice of Construction application number.

(c) Owners or operators of any stationary source subject to registration ~~((shall))~~ must, upon request by the Agency, make annual and/or periodic reports to the Agency regarding emission sources, types and amounts of raw materials and fuels used, types, amounts and concentrations of air contaminants emitted, data on emissions units and control devices, data on emission points, and any other information directly related to the registration program as requested by the Agency.

(d) Annual and periodic reports as required by the Agency pursuant to Rule 4.3(c) ~~((shall))~~ must be made by the owner or lessee of the stationary source, or an agent, on forms provided by the Agency or in an Agency approved format. The owner of the stationary source ~~((shall be))~~ is responsible for completion and submittal of the annual or periodic report within thirty (30) days of receipt of the request and forms provided by the Agency. The owner of the stationary source ~~((shall be))~~ is responsible for the completeness and correctness of the information submitted.

(e) The owner or operator ~~((shall))~~ must notify the Agency of any changes in the following administrative information within 30 days from the change taking place:

(1) Owner name, address, and phone number;

(2) Name, address, and phone number of on-site contact person;

(3) Process or equipment changes resulting in an increase in emissions, ~~((provided that e))~~ Changes requiring prior approval by the Agency through a Notice of Construction (NOC) or requiring submittal of a Notice of Intent to Operate (NOI) application ((shall)) must also comply with the requirements of Rule 6.1 and 6.4 respectively; and,

(4) Any permanent shut down or decommissioning of a stationary source.

(f) Each notification or report required under this rule ~~((shall))~~ must be signed by the owner or operator of the stationary source, or by the agent appointed by the owner.

(g) The Agency may require the owner or operator of a stationary source develop and implement an Operations and Maintenance (O&M) plan to assure compliance with the applicable air regulations and standards. When required, a copy of the plan must be retained at the facility where the stationary source is located and must be available to the Agency for inspection. ~~((According to the schedule set forth below, owners or operators of stationary sources subject to registration pursuant to Rule 4.1 above shall develop, implement and update when necessary an Operations and Maintenance plan to assure continuous compliance with applicable air regulations and standards including ORCAA's Regulations. Operation and Maintenance plans shall include, but not be limited to, the measures listed in Rule 4.3(g)(2). A copy of the Operations and Maintenance plan shall be retained at the facility where the stationary source is located and shall be made available to all operators of the stationary source and the Agency upon request.~~

~~(1) Operation and Maintenance plans required by this rule shall be written, and shall be completed or updated, and fully implemented by the following due dates:~~

~~(i) No later than 120 days from initial registration with the Agency for existing stationary sources not yet registered with the Agency.~~

~~(ii) No later than 90 days from commencement of operation for newly constructed or established stationary sources requiring registration.~~

~~(2) Operation and Maintenance plans required pursuant to Rule 4.3(g) shall include, but not be limited to, the following types of measures:~~

~~(i) Periodic inspection of emission units and associated control devices to evaluate air contaminant control effectiveness and compliance with applicable emissions limits;~~

~~(ii) Measures for monitoring and recording of all emissions unit and control device performance when required by regulation or an approval order;~~

~~(iii) Procedures for facilitating prompt repair of any defective equipment or control device associated with air contaminant emissions;~~

~~(iv) A system for logging all actions required by the plan;~~

~~(v) Standard procedures for responding to air quality related complaints received by the facility where the stationary source is located; and,~~

~~(vi) General policy and measures for minimizing dust emissions and odors.)~~

(h) Owners or operators of stationary sources subject to registration ~~((shall))~~ will be classified ~~((according to))~~ per Rule 4.4 and ~~((shall))~~ must pay annual registration fees pursuant to Rule 3.1.

AMENDATORY SECTION

RULE 4.4 CLASSIFICATION OF SOURCES REQUIRED TO REGISTER WITH AGENCY

All sources requiring registration pursuant to Rule 4.1 ~~((shall))~~ will be classified in one of the registration

class~~((es))~~ifications listed in Table 4.4b. A source will be placed in the most appropriate classification as determined by the Agency. ~~((For purposes of))~~ To determine classification, the pollutants listed in Table 4.4a will be considered.

Table 4.4a: Pollutants

Total Suspended Particulates (TSP)
Sulfur Oxides (SOx)
Nitrogen Oxides (NOx)
Volatile Organic Compounds (VOC)
Carbon Monoxide (CO)
Toxic Air Pollutants (TAP)

Table 4.4b: Registration Class~~((es))~~ification (RC)

CLASSIFICATION RC1 - Any source that has an effective Synthetic Minor Order issued pursuant to WAC 173-400-091.
CLASSIFICATION RC2 - Any source with a potential to emit 30 tons or more per year of any combination of pollutants listed in Table 4.4a.
CLASSIFICATION RC3 - Any source with a potential to emit 10 tons or more per year of any combination of pollutants listed in Table 4.4a.
CLASSIFICATION RC4 - Any source, with a potential to emit 5 tons or more per year of any combination of pollutants listed in Table 4.4a.
CLASSIFICATION RC5 - Any source with a potential to emit less than 5 tons per year of any combination of pollutants listed in Table 4.4a.

REPEALED

~~**(RULE 4.5 REGISTRATION OF PORTABLE EQUIPMENT (TEMPORARY PORTABLE SOURCES))**~~

~~(a) Notice of Intent to Operate. The owner or operator of the following sources shall notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NOI) in accordance with rule 6.1.1:~~

~~(1) Relocation of temporary portable stationary sources that have a valid Order of Approval from Ecology or an air pollution control authority in the State of Washington; and,~~

~~(2) Nonroad engines, provided that the regulation of nonroad engines under this rule are subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 State Regulation of Nonroad Internal Combustion Engines.~~

~~(b) Requirements for Operation. Sources subject to rule 4.5(a) shall meet the operating requirements established under Rule 6.1.7.)~~

AMENDATORY SECTION

RULE 5.1 OPERATING PERMIT PROGRAM

(a) Purpose. The purpose of this rule is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70A.~~((94))15.~~~~((161))2260~~ and its implementing regulation chapter 173-401 WAC.

(b) Commitment to administer the program. ~~((Olympic Region Clean Air Agency))~~The Agency~~((s))~~, provided full or partial delegation by the US Environmental Protection Agency (EPA) and the Washington Department of Ecology

~~((DO))~~ECY, ~~((shall))~~ will administer an air operating permit program for the Agency's jurisdiction in accordance with Title V of the Federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70A.~~((94))15.~~~~((161))2260~~ and its implementing regulation chapter 173-401 WAC.

(c) Applicability. The provisions of this rule apply to all sources subject to the requirements of chapter 173-401 WAC.

(d) Compliance. It ~~((shall be))~~ is unlawful for any person to cause or allow the operation of any source subject to the requirements of chapter 173-401 WAC without complying with the provisions of chapter 173-401 WAC and any permit issued under its authority.

AMENDATORY SECTION

RULE 5.2 (RESERVED) ((CLASSIFICATION OF SOURCES

~~(a) All air contaminant sources required an operating permit pursuant to Title V of the Federal Clean Air Act (FCAA), RCW 70-94-161, or ORCAA's Regulations shall be classified in one of the operating permit program source classification categories (OP#) listed in Table 5.2a. A source will be placed in the most appropriate classification category as determined by the Agency.~~

~~(b) For purposes of source classification, the pollutants listed in Table 5.2b will be considered. Air contaminant emissions from a source shall be categorized in the most appropriate pollutant category as determined by the Agency.~~

~~(c) Air contaminant emissions counted as toxic air pollutants shall not be double-counted under any other air pollutant for purposes of classification.~~

Table 5.2a: Operating Permit Program Source Classification

<p>CLASS OP1—Any source with a potential to emit 100 tons per year or more of any pollutant listed in Table 5.2b.</p> <p>CLASS OP2—Any source, except those sources classifiable under OP1, with a potential to emit 10 tons or more per year of any toxic air pollutants or 25 tons or more per year of any combination of toxic air pollutants.</p> <p>CLASS OP3—Any air contaminant source requiring a general operating permit pursuant to Title V, section 504(d) of the Federal Clean Air Act (FCAA).</p> <p>CLASS OP4—Any other source, except those sources classifiable under OP1, OP2, or OP3 requiring an Operating Permit pursuant to Title V of the Federal Clean Air Act (FCAA), RCW 70.94.161, or ORCAA's Regulations.</p>

Table 5.2b: Regulated Pollutants

<p>Total Particulates (TSP)</p> <p>Sulfur Oxides (SO_x)</p> <p>Nitrogen Oxides (NO_x)</p> <p>Volatile Organic Compounds (VOC)</p> <p>Carbon Monoxide (CO)</p> <p>Toxic Air Pollutants</p>

))

AMENDATORY SECTION

RULE 5.3 RESTRICTING THE POTENTIAL TO EMIT

A service-based fee, ~~in~~ addition ~~((at))~~ to annual registration or operating permit fees, ~~((shall))~~ will be assessed to those sources applying to the Agency for approval of enforceable conditions that restrict the sources' potential to emit, making the source a minor source and not subject to an operating permit. Fees for restricting a sources' potential to emit ~~((shall))~~ will be assessed ~~((according to))~~ per Regulation 3, Rule 3.3. The Agency ~~((shall))~~ assesses the fee based on only those emissions units affected by the enforceable condition as proposed by the applicant.

AMENDATORY SECTION

REGULATION 6 - REQUIRED PERMITS AND NOTIFICATIONS

RULE 6.1 NOTICE OF CONSTRUCTION REQUIRED

(a) Approval of a Notice of Construction (NOC) Application required. It ~~((shall be))~~ is unlawful for any person to cause or allow the following actions unless a Notice of Construction application has been filed with and approved by the Agency, except for those actions involving stationary sources excluded under Rule 6.1 (b) and (c):

- (1)** Construction, installation, or establishment of any stationary source;
- (2)** Modification to any existing stationary source; or,
- (3)** Replacement or substantial alteration of emission control technology installed on an existing stationary source.

(b) Exemption provided Notice of Intent to Operate (NOI). An NOC application and ~~((prior))~~ approval by the Agency is not required prior to construction, installation, establishment, or modification of the stationary sources listed in Rule 6.4 ~~((below,))~~ if a complete Notice of Intent to Operate is filed with the Agency per that section. ~~((Procedures for submitting an NOI are contained in Rule 6.1.1:))~~

~~**(1)** Temporary Portable Stationary Sources. Temporary portable stationary sources that have been previously~~

approved by Ecology or a local air pollution control authority in the State of Washington through an NOC application:

~~**(2)** Stationary Sources based on Potential to Emit. Any stationary source that:~~

~~**(i)** Will have a combined uncontrolled potential to emit from all emission units less than:~~

~~**(A)** 0.5 tons per year of any criteria pollutant; and,~~

~~**(B)** 1.0 tons per year of total criteria pollutants and VOC combined; and,~~

~~**(C)** 0.005 tons per year of lead; and,~~

~~**(D)** The de minimis emission rate specified for each Toxic Air Pollutant listed in WAC 173-460-150; and,~~

~~**(E)** 1.0 tons per year of ozone depleting substances combined.~~

~~**(3)** Gasoline Dispensing Facilities (GDF). Construction or modification of a gasoline dispensing facility, or replacement or substantial alteration of vapor recovery systems, provided that:~~

~~**(i)** The installed equipment is in accordance with the current California Air Resources Board (CARB) Executive Orders listed on the GDF Notification form effective at the time of the filing;~~

~~**(ii)** The GDF is not part of a stationary source subject to the Air Operating Program (Rule 5);~~

~~**(iii)** The GDF is not subject to any of the Stage II requirements in WAC 173-491-040(5); and~~

~~**(iv)** The project does not involve the removal of a Stage II vapor recovery system.))~~

(c) Categorical Exemptions. An NOC application and prior approval by the Agency is not required prior to construction, installation, establishment, or modification of stationary sources in the following stationary source categories, if sufficient records are kept documenting the exemption:

Maintenance/construction:

(1) Cleaning and sweeping of streets and paved surfaces;

(2) Concrete application, and installation;

(3) Dredging wet spoils handling and placement;

(4) Paving application and maintenance, excluding asphalt plants;

(5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine housekeeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(6) Plumbing installation and plumbing protective coating application associated with plant maintenance activities;

(7) Roofing application;

(8) Insulation application and maintenance, excluding products for resale;

(9) Janitorial services and consumer use of janitorial products;

(10) Asphalt laying equipment including asphalt-roofing operations (not including manufacturing or storage);

(11) Blast cleaning equipment that uses a suspension of abrasive in liquid water;

(12) Spray painting or blasting equipment used at temporary locations to clean or paint bridges, water towers, buildings, or similar structures.

Storage Tanks:

(13) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(14) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(15) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(16) Process and white-water storage tanks;

(17) Storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cu ft);

(18) Gasoline storage tanks less than 2,000 gallons storage capacity;

(19) Gasoline dispensing facilities with a cumulative gasoline storage capacity of less than 10,000 gallons;

(20) Storage tanks of a capacity of 10,000 gallons or less, with lids or other appropriate closure, and for the storage of materials containing organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC);

(21) Storage tanks of a capacity of 40,000 gallons or less, with lids or other appropriate closure, used for the storage of organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC), with a true vapor pressure less than 0.01 kPa (0.002 psia) (0.0001 atm);

(22) Storage tanks of a capacity of 40,000 gallons or less used for the storage of butane, propane, or liquefied petroleum gas;

(23) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases, and acids.

(24) Storage tanks used exclusively for storage of diesel fuel;

(25) Loading and unloading equipment used exclusively for the storage tanks exempted under this rule.

Combustion:

(26) Fuel burning equipment (not including incinerators) that:

(i) is used solely for a private dwelling serving five families or less; or

(ii) has a maximum heat input rate of 5 MMBtu/hr or less if burning natural gas, propane, or LPG; or

(iii) has a maximum heat input rate of 0.5 MMBtu/hr or less if burning waste-derived fuels; or

(iv) has a maximum heat input rate of 1 MMBtu/hr or less if burning recycled or used oil per the requirements of RCW 70A.04.015.0410; or

(v) has a maximum heat input rate of 1 MMBtu/hr or less if burning any other type of fuel and with less than or equal to 0.05% sulfur by weight.

(27) All stationary gas turbines with a rated heat input (\leq) less than 10 million Btu per hour.

(28) Stationary internal combustion engines having rated capacity:

(i) (\leq) less than 50 horsepower output; or

(ii) (\leq) less than 500 horsepower and used only for standby emergency power generation.

(29) ~~(A-H)~~ Nonroad engines (~~subject to 40 CFR Part 89~~).

Material handling:

(30) Storage and handling of water-based lubricants for metal working where organic content of the lubricant is (\leq) less than 10%;

(31) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallons, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @ 21°C, with lids or other appropriate closure.

Water treatment:

(32) Septic sewer systems, not including active wastewater treatment facilities;

(33) NPDES permitted ponds and lagoons used solely for (~~the purpose of~~) settling and suspended solids and skimming of oil and grease;

(34) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(35) Process water filtration system and demineralizer vents;

(36) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems (does not include engines);

(37) Demineralizer tanks;

(38) Alum tanks;

(39) Clean water condensate tanks;

(40) Oil/water separators, except those at petroleum refineries;

(41) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(42) Municipal sewer systems, including wastewater treatment plants and lagoons with a design capacity of one million gallons per day or less (~~provided that they do not use anaerobic digesters, chlorine disinfections or sewage sludge incinerators~~).

Environmental chambers and laboratory equipment:

(43) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(44) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(45) Installation or modification of a single laboratory fume hood;

(46) Laboratory calibration and maintenance equipment.

Monitoring/quality assurance/testing:

(47) Equipment and instrumentation used for quality control/assurance or inspection purposes;

(48) Hydraulic and hydrostatic testing equipment;
 (49) Sample gathering, preparation and management;
 (50) Vents from continuous emission monitors and other analyzers.

Miscellaneous:

- (51) Single-family residences and duplexes;
 (52) Plastic pipe welding;
 (53) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
 (54) Insecticide, pesticide, or fertilizer spray equipment;
 (55) Comfort air conditioning;
 (56) Flares used to indicate danger to the public;
 (57) Natural and forced air vents and stacks for bathroom/toilet activities;
 (58) Personal care activities including establishments like beauty salons, beauty schools, and hair cutting establishments;
 (59) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
 (60) Tobacco smoking rooms and areas;
 (61) Noncommercial smokehouses;
 (62) Blacksmith forges for single forges;
 (63) Vehicle maintenance activities, not including vehicle surface coating;
 (64) Vehicle or equipment washing;
 (65) Wax application;
 (66) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
 (67) Ozone generators and ozonation equipment;
 (68) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
 (69) Electrical circuit breakers, transformers, or switching equipment installation or operation;
 (70) Pneumatically operated equipment, including tools and hand-held applicator equipment for hot melt adhesives;
 (71) Fire fighting and similar safety equipment and equipment used to train fire fighters;
 (72) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 (73) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
 (74) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);
 (75) Surface coating, aqueous solution or suspension containing ((<)) less than 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
 (76) Cleaning and stripping activities and equipment using solutions having ((<)) less than 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
 (77) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.
 (78) Laundry dryers, extractors or tumblers used exclusively for the removal of water from fabric;

- (79) Residential composting facilities;
 (80) Restaurants and other retail food preparing establishments;
 (81) Routing, turning, carving, cutting, and drilling equipment used for metal, wood, plastics, rubber, leather, or ceramics;
 (82) Steam cleaning equipment used exclusively for that purpose;
 (83) Vacuum cleaning systems used exclusively for office or residential housekeeping;
 (84) Vacuum producing devices used in laboratory operations and vacuum producing devices that do not remove or convey air contaminants from or to another source;
 (85) Vents used exclusively for:
 (i) Sanitary or storm drainage systems; or
 (ii) Safety valves
 (86) Washing or drying equipment used for products fabricated from metal or glass, if no volatile organic material is used in the process.
 (87) Welding, brazing, or soldering equipment;
 (88) Coffee roasters with a design capacity less than 10 pounds per batch;
 (89) Bark and soil screening operations;
 (90) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 150 tons per hour;
 (91) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 25 tons per hour.

Reviser's note: The typographical 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.

AMENDATORY SECTION

RULE 6.1.1 RESERVED ((Notice of Intent to Operate

~~(a) For those sources required to submit a notice of intent to operate, a complete Notice of Intent to Operate (NOI) application shall be filed at least 15 days prior to starting operation of the source.~~

~~(b) NOI applications shall be made on standard forms of the Agency and shall include:~~

~~(1) All information requested in the applicable standard forms;~~

~~(2) If submitting a NOI for a stationary source qualifying for the exemption based on potential to emit under Rule 6.1(b)(2), documentation verifying the stationary source's potential to emit;~~

~~(3) Any additional information requested by the Agency to verify that operation of the stationary source will be in compliance with applicable air pollution control requirements; and,~~

~~(4) Applicable fee according to Rule 3.6.~~

~~(e) Condition of operation. The Agency may establish enforceable conditions of operation, through issuance of a regulatory Order, as are reasonably necessary to assure compliance with applicable air pollution control requirements.~~

~~(d) Temporary portable sources. Temporary portable sources shall also meet the requirements of Rule 6.1.7.)~~

AMENDATORY SECTION**Rule 6.1.2 Application Processing**

(a) Application certification. All NOC applications ~~((shall))~~ must be signed by the applicant or owner, who may be required to submit evidence of their authority.

(b) Completeness determination. Within thirty (30) days after receiving an NOC application, the Agency ~~((shall))~~ will either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Complete applications ~~((shall))~~ must include:

(1) Any standard NOC form of the Agency that is applicable to the proposed stationary source or modification;

(2) An Environmental Checklist consistent with requirements in WAC 197-11-315 of the State Environmental Policy Act (SEPA), for any one of the following:

(i) A Determination of Non-significance (DNS) in accordance with WAC 197-11-340;

(ii) A Mitigated Determination of Non-significance (MDNS) in accordance with WAC 197-11-350; or,

(iii) Written statement by the applicant claiming that the proposed stationary source or modification is categorically exempt from SEPA.

(3) When applicable, all information required for review under WAC 173-400-117 and WAC 173-400-~~((141))~~ 700 through 750 and WAC 173-400-800 through 860;

(4) NOC processing fees in accordance with Rule 3.3 (b) and (c); and,

(5) Any additional information requested by the Agency that is necessary to make the determinations required under Rule 6.1.4.

(c) Timeframe for Public Involvement:

(1) For NOC applications subject to a mandatory public comment period pursuant to Rule 6.1.3(b), the Agency ~~((shall))~~ will issue a Preliminary Determination within 60 days from receipt of a complete application followed by a public comment period in accordance with Rule 6.1.3(c).

(2) For all other NOC applications, the Agency will post a public comment period in accordance with Rule 6.1.3(a) within 30 days from receipt of an application.

(d) Final determination schedule. Final Determination on an application subject to a mandatory public comment period in accordance with Rule 6.1.3(b) ~~((shall))~~ will be made as promptly as possible after close of the public comment period. Final Determination on all other applications ~~((shall))~~ will be made within sixty (60) days of receipt of a complete NOC application.

(e) Approval. A final determination to approve an NOC application and an "Order of Approval," setting forth the conditions of approval, ~~((shall))~~ will be issued, and served as provided for in these Regulations, provided the following conditions are met:

(1) A complete application in accordance with Rule 6.1.2 (b) was received by the Agency;

(2) The application verifies to the Agency that the applicable new source review requirements in Rule 6.1.4 have been met;

(3) Application processing fees in accordance with Rule 3.3 have been paid;

(4) The application includes an environmental checklist and other documents that verify compliance with the State Environmental Policy Act;

(5) Applicable public involvement requirements in Rule 6.1.3 have been met; and,

(6) The NOC has been signed by the Executive Director of the Agency or an authorized representative.

(f) Denial. If the Agency determines that a proposed project subject to approval of an NOC application does not meet the applicable approval requirements in Rule 6.1.~~((4))~~ 3, then a final determination to deny approval and an Order to Deny Construction ~~((shall))~~ will be issued and served as provided for in these Regulations. Any Order to Deny Construction ~~((shall))~~ must:

(1) Be in writing;

(2) Set forth the objections in detail ~~((with reference))~~ regarding ~~((to))~~ the specific law or rule or rules of these Regulations that will not be met by the proposed project; and,

(3) ~~((Shall))~~ Must be signed by the Executive Director of the Agency or an authorized representative.

(g) Scope of review of modifications. New source review of a modification to an existing stationary source ~~((shall be))~~ is limited to the emission unit proposed to be modified, and the air contaminants whose emissions would increase because ~~((as a result))~~ of the action; provided, however, that review of a major modification must also comply with applicable major new source review requirements under Rule 6.1.4(a) and/or Rule 6.1.4(b), as applicable.

(h) Integration with Title V permitting requirements. A person seeking approval to construct or modify a stationary source subject to chapter 173-401 WAC may elect to integrate review of the operating permit application or amendment required under RCW 70A.~~((94))~~ 15.~~((164))~~ 2260 and the NOC application required by this rule. An NOC application designated for integrated review ~~((shall))~~ will be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. Applications submitted under WAC 173-400-700 through 750 and WAC 173-400-800 through 860 ~~((A PSD application under WAC 173-400-141, an NOC application for a major modification in a nonattainment area or an NOC application for a major stationary source in a nonattainment area))~~ must also comply with public involvement requirements of Rule 6.1.3 and WAC 173-400-171.

(i) ~~Professional((-))Engineer((-))~~ review and sign-off. Every final determination on an NOC application ~~((shall))~~ must be reviewed and signed prior to issuance by a professional engineer, or staff under the direct supervision of a professional engineer ~~((, in the employ of the Agency))~~.

(j) Appeals.

(1) Any order issued pursuant to this Rule may be appealed to the Pollution Control Hearings Board of the State of Washington, pursuant to Rule 1.8.

(2) Any order issued or the failure to issue such an order, ~~((shall))~~ does not relieve any person from their obligation to comply with any emission control requirement or with any other provision of law.

(k) Major NSR obligations of the Agency. If the new stationary source is a major stationary source, or the change is a major modification, the Agency ~~((shall))~~ will:

(1) Submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(2) Send a copy of the final approval order to EPA.

(l) Deviations from approved plans. After approval to construct, install, establish, or modify a stationary source or air pollution control device is granted, deviations from the approved plans, drawings, data, and specifications that may result in changes to air pollutant emission rates, control efficiencies or impacts are not permissible without prior approval through an NOC application.

Reviser's note: The typographical 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.

AMENDATORY SECTION

Rule 6.1.3 Public Involvement

The public ~~((shall))~~ will be afforded an opportunity to express interest in any Notice of Construction (NOC) application prior to approval or denial by the Agency.

(a) Public Notice.

(1) A public interest fact sheet ~~((shall))~~ must be published on the Agency's ~~((internet homepage))~~ website announcing the receipt of permit applications and other proposed actions that do not automatically require a public comment period pursuant to Rule 6.1.3(b). Fact sheets ~~((shall))~~ must be published on the Agency's ~~((Internet homepage))~~ webpage for a minimum of fifteen (15) days. ~~((In the event that))~~ If publication ~~((of))~~ to the Agency's ~~((Internet homepage))~~ website is not possible, the fact sheet will be published in a newspaper of general circulation in the area of the proposed action. When published in a newspaper, fact sheets will be published for a minimum of one (1) day.

(2) The ~~((general))~~ public ~~((shall))~~ must be afforded a minimum of fifteen (15) days from initial publishing of a fact sheet to express an interest in a ~~((particular))~~ permit application or proposed decision by responding to the Agency in writing via letter, fax, or email.

(3) Public interest fact sheets ~~((shall))~~ must include:

- (i) The name of the applicant;
- (ii) Location of the proposed project;
- (iii) A brief project description;
- (iv) Agency contact information;

(v) Procedures for submitting comments and the date by which public comments are due;

(vi) A statement that a public comment period will be provided if requested by any person, government agency, group, or the applicant.

(4) Requests for a public comment period ~~((shall))~~ must be submitted to the Agency in writing via letter, fax, or electronic mail. A public comment period ~~((shall))~~ must be provided pursuant to Rule 6.1.3(c) for any permit application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.

(5) The Agency ~~((shall))~~ must consider comments submitted in accordance with Rule 6.1.3 (a)(2) provided they are received prior to close of the comment period specified in the public interest fact sheet.

(b) Mandatory public comment period. A public comment period in accordance with Rule 6.1.3(c) ~~((shall))~~ must be required prior to approval or denial of any NOC application if:

(1) The proposed project would cause a significant net increase in emissions of any air contaminant listed in the following table:

Table 6.1a: Significant Emissions Increase

AIR CONTAMINANT	POTENTIAL TONS/YEAR
Carbon Monoxide (C ((o)) O)	100.0
Volatile Organic Compounds (VOC)	40.0
Sulfur Dioxide SO ₂	40.0
Nitrogen Oxides (NO _x)	40.0
Particulate Matter (PM)	25.0
Fine Particulate Matter (PM ₁₀)	15.0
Lead	0.6
Fluorides	3.0
Sulfuric Acid Mist	7.0
Hydrogen Sulfide (H ₂ S)	10.0
Total Reduced Sulfur (including H ₂ S)	10.0
Total Toxic Air Pollutants (total TAPs) (TAPs as listed in chapter 173-460 WAC)	25.0
Any single Toxic Air Pollutant (TAP)	10.0
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)	15.0
Municipal waste combustor acid gases (measured as SO ₂ and hydrogen chloride)	40.0

(2) The applicant requests a limit on the potential to emit under Rule 6.1.12;

(3) The applicant requests to bank emission reduction credits;

(4) The proposed project involves refuse burning equipment;

(5) The Executive Director determines that there may be substantial public interest in the proposal;

~~((6))~~ The applicant requests a change in any condition of an approval order that results in an increase in emissions or a substantial change to any monitoring, record keeping or reporting requirement of an approval order)

~~((7))~~ (6) The proposed action is to extend the deadline to begin construction of a major stationary source or major modification in a nonattainment area;

~~((8))~~ (7) A modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part

51 (in effect on June 1, 2003) was used as part of review under Rule 6.1.4;

~~((9))~~ (8) The action involves an order to determine a category wide RACT;

~~((10))~~ (9) The action involves establishing a compliance schedule or variance;

~~((11))~~ (10) The order is to demonstrate the credible height of a stack which exceeds the GEP formula height and sixty-five (65) meters, by means of a fluid model or a field study, or purposes of establishing an emission limitation;

~~((12))~~ (11) The action includes an order to authorize a bubble; or,

~~((13))~~ (12) A public comment period is requested by any person, interested governmental agency, group, or the applicant in accordance with requirements for under Rule 6.1.3(a).

(c) Public Comment period. If required, a public comment period ~~((shall))~~ must be initiated through posting on the Agency's website for the duration of the public comment period. The Agency may supplement this method of notification by publication of a legal notice in a ~~((local))~~ newspaper of daily circulation in the area of proposed action or by other methods appropriate to notify the local community. The public comment period ~~((shall))~~ can only be initiated ~~((only))~~ after all information required by the Agency has been submitted and after a Preliminary Determination has been made. The cost of any supplemental noticing ~~((providing legal notice shall))~~ must be borne by the applicant ~~((according to))~~ per provisions in Rule 3.3. Public notice of any NOC application requiring a public comment period ~~((shall))~~ must include the following:

(1) Availability of the NOC application and any written Preliminary Determination of the Agency in at least one location near the proposed project site ~~((and))~~ or on the Agency's ~~((Internet homepage))~~ website, excluding any confidential information as provided in Rule 1.6. The Agency's written Preliminary Determination ~~((shall))~~ must include the conclusions, determinations, and pertinent supporting information from the Agency's analysis of the effect of the proposed project on air quality.

(2) Publication of a legal notice in a newspaper of general circulation in the area of the proposed project which provides:

- (i) A brief description of the project;
- (ii) Location of the project and location of documents made available for public inspection;
- (iii) The deadline for submitting written comments;
- (iv) A statement that any person, interested governmental agency, group, or the applicant may request a public hearing; and,
- (v) A statement that a public hearing may be held if the Agency determines within a 30-day period that significant public interest exists; and,
- (vi) The date of the close of the public comment period in the event of a public hearing; and,

(vii) For projects subject to Special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the legal notice ~~((shall))~~ must ~~((either))~~ explain the permitting agency's decision or state that an explanation of the decision appears in the fact sheet for the proposed PSD permit.

(3) Notice to the US Environmental Protection Agency Region 10 Regional Administrator.

(d) Extent of public comment period. Unless a public hearing is held, the public comment period ~~((shall))~~ must be a minimum of thirty days ~~((the 30-day period following the date the public notice is first published))~~. If a public hearing is held, the public comment period ~~((shall))~~ must extend through the hearing date and thereafter for such period, if an, as the notice of public hearing may specify.

(e) Public hearings. The applicant, any interested governmental entity, any group, or any person may request a public hearing within the comment period specified in the public notice. Any such request ~~((shall))~~ must indicate, in writing, the interest of the entity filing it and why a hearing is warranted. The Agency may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing ~~((shall))~~ will be held upon such notice and at a time and place as the Agency deems reasonable. The Agency ~~((shall))~~ must provide at least 30 days prior notice of any hearing.

(f) Consideration of public comments. No final decision on any NOC application ~~((shall))~~ can be made until all public comment periods have ended and any comments received in accordance with requirements for public comments under Rule 6.1.3 have been considered.

(g) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this rule (e.g., SEPA). This rule does not apply to an application for a "major modification" or an application for a "major stationary source."

(h) Public information. In accordance with Rule 1.6, all information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70A.~~((94))15.~~~~((205))2510,~~ ~~((shall))~~ must be available for public inspection at the agency. This includes copies of notices of construction applications, orders, and modifications.

Reviser's note: The typographical 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.

AMENDATORY SECTION

Rule 6.1.4 Requirements for Approval

(a) Attainment or Unclassified area requirements. The following requirements apply to any new stationary source or modification proposed in an attainment or unclassified area:

(1) The proposed new stationary source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70A.~~((94))15~~ RCW and applicable emission standards in ORCAA's Regulations.

(2) The proposed new stationary source or modification will employ BACT for all air pollutants not previously emitted or whose emissions would increase because ~~((as a result))~~ of the new stationary source or modification.

(3) Allowable emissions from the proposed new stationary source or modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be ~~((considered to be))~~ met if the projected impact of the allowable emissions from the proposed new stationary source

or the projected impact of the increase in allowable emissions from the proposed modification at any location within a non-attainment area does not exceed the levels listed in the following table for the pollutants for which the area has been designated nonattainment:

Table 6.1.b Insignificant Impact Thresholds

Pollutant	Annual Average	24-hour Average	8-hour Average	3-hour Average	1-hour Average
CO	-	-	0.5 mg/m ³	-	2.0 mg/m ³
SO ₂	1.0 µg/m ³	5.0 µg/m ³	-	25.0 µg/m ³	30.0 µg/m ³
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³	-	-	-
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³	=	=	=
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all ~~((of the))~~ requirements of this rule.

(4) If the proposed project is subject to WAC 173-400~~((+44))~~700 through 750 or WAC 173-400-800 through 860, Ecology has issued a final ~~((PSD))~~ permit under those programs.

(5) If the proposed new stationary source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the stationary source meets all applicable requirements of that program.

(b) Nonattainment area requirements. The following requirements apply to any new stationary source or modification proposed in a nonattainment area:

(1) The proposed new stationary source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70A~~((94))~~15 RCW and applicable emission standards in ORCAA's Regulations.

(2) The proposed new stationary source or modification will employ BACT for all air contaminants, except that if the new stationary source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new stationary source or modification is major.

(3) The proposed new stationary source or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Standard Operating Procedures and will comply with Rule 6.1.4 (a)(3) for all air contaminants for which the area has not been designated nonattainment.

(4) If the proposed new stationary source is a major stationary source or the proposed modification is a major modification, the Agency has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed ~~((as a result))~~ because of its location, construction, or modification.

(5) If the proposed new stationary source or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions from the proposed new stationary source or modification of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified stationary source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(i) The proposed new level of allowable emissions of the source or emissions unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits required by the Federal Clean Air Act, including the SIP, cannot be credited.

(ii) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emission of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new stationary source or modification is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the non-attainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2000).

(iii) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified stationary source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some, or all, of the offset requirements of this rule.

(6) If the proposed new stationary source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such persons) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(7) If the proposed new stationary source or modification is subject to WAC 173-400-~~((141))~~700 through 750 and WAC 173-400-800 through 860, Ecology has issued a final ~~((PSD))~~ permit under these programs. ~~((for all air contaminants subject to permitting under WAC 173-400-141.))~~

(8) If the proposed new stationary source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(9) If the proposed new stationary source is a major stationary source within the meaning of WAC 173-400-~~((113(4)))~~710 or 810, or the proposed modification is a major modification within the meaning of WAC 173-400-~~((113(4)))~~710 or 810, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.

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

AMENDATORY SECTION

Rule 6.1.5 Notice of Completion—Order of Violation

(a) The owner or applicant ~~((shall))~~ must notify the Agency of the completion of construction, installation, establishment, or modification of a stationary source approved through an NOC application and, in the case of a new stationary source, the date upon which operation will commence. The Agency may inspect the new or modified stationary source and may issue an Order of Violation if it is found that it is not in accord with the approved NOC application or Order of Approval.

(b) Upon receipt of an Order of Violation, the owner may appeal the order in accordance with the provisions and procedures in Rule 1.8 and Rule 2.1 of these Regulations.

(c) The issuance of approval as provided by Rule 6.1.2(e) ~~((shall))~~ does not relieve the owner of the obligation to comply with the laws or regulations as adopted by this Agency or prevent the Board or ~~((Control Officer))~~ Executive Director from issuing violation notices as provided by Rule 1.5~~((-))~~(b).

AMENDATORY SECTION

Rule 6.1.6 Time Limit on Approval of Construction

Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Agency may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply

with public notice requirements in WAC 173-400-171. This provision does not apply to the ~~((time))~~ period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date.

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

AMENDED SECTION

Rule 6.1.7 ~~RESERVED~~ ~~((Temporary Portable Sources~~

~~((a))~~ Notice of Intent to Operate. The owner or operator of the following sources shall notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NOI) in accordance with Rule 6.1.1:

~~((1))~~ Relocation of temporary portable stationary sources that have a valid Order of Approval from Ecology or an air pollution control authority in the State of Washington; and,

~~((2))~~ Nonroad engines, provided that the regulation of nonroad engines under this rule are subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89—State Regulation of Nonroad Internal Combustion Engines.

~~((b))~~ Requirements for Operation. Sources subject to Rule 6.1.7(a) shall meet the following requirements:

~~((1))~~ The operation shall not cause a violation of ambient air quality standards;

~~((2))~~ If the operation is in a nonattainment area, it shall not interfere with the scheduled attainment of ambient standards;

~~((3))~~ The temporary portable source shall operate in compliance with all applicable air pollution rules and regulations;

~~((4))~~ A temporary portable source that is considered a major stationary source within the meaning of Rule 1.4 shall also comply with the requirements in WAC 173-400-141 and Rule 6.1.4(b) as applicable;

~~((5))~~ Any operating condition in an Order previously issued to a temporary portable source shall remain in effect upon relocating the source within ORCAA's jurisdiction unless specifically superseded by condition in a subsequent Order;

~~((6))~~ Operation of nonroad engines shall not exceed 90 operating days in any calendar year anywhere within ORCAA's jurisdiction unless a regulatory Order has been issued by the Agency. The Agency may set specific conditions for operating during that time period as are reasonably necessary to assure compliance with applicable air pollution control requirements. For purposes of this rule, an operating day shall be considered any time equipment operates within a calendar day.)

AMENDATORY SECTION

Rule 6.1.8 Conditions in Orders of Approval ~~((Orders))~~ Enforceable

Failure to comply with any term or condition of an Order of Approval ~~((Order))~~ constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.~~((94))~~15.~~((430))~~3150 and RCW 70A.~~((94))~~15.~~((43+))~~3160.

AMENDATORY SECTION**Rule 6.1.9 Work Done Without Approval**

~~((a))~~ Where work, for which a Notice of Construction is required, is commenced, or performed prior to making application and receiving approval, the ~~((Control Officer))~~ Executive Director or an authorized agent may ~~((conduct an))~~ investigate~~((ion))~~ as part of the Notice of Construction review. In such a case, an investigation fee, in addition to the fees of Rule 3.3 ~~((shall))~~ may be assessed in an amount ~~((equal))~~ up to 3 times the fees required of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

~~((b))~~ Where work for which a Notice of Intent to Operate is required is commenced prior to making application and receiving approval, the Control Officer or an authorized agent, may conduct an investigation as part of the Notice of Intent review. In such a case, an investigation fee, in addition to fees of Rule 3.3, shall be assessed in an amount equal to 3 times the Portable Air Contaminant Source fees of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.)

AMENDATORY SECTION**Rule 6.1.10 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source**

(a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source ~~((shall))~~ must file a Notice of Construction (NOC) application with the Agency. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or similar parts replacement.

(b) For projects not otherwise reviewable under Rule 6.1 (a)(1) or Rule 6.1 (a)(2), the Agency may:

(1) Require that the owner or operator employ RACT on the affected stationary source;

(2) Prescribe reasonable operation and maintenance conditions for the control equipment; and,

(3) Prescribe other requirements as authorized by chapter 70A, ~~((94))~~ 15 RCW.

(c) Within 30 days of receipt of a Notice of Construction application under this rule the Agency ~~((shall either))~~ will notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete NOC application under this rule the Agency ~~((shall either))~~ will issue an order of approval or a proposed RACT determination for the proposed project.

(d) Construction ~~((shall))~~ must not commence on a project subject to review under this rule until the Agency issues a final order of approval. However, any NOC application filed under this rule ~~((shall))~~ will be deemed to be approved without conditions if the Agency takes no action within 30 days of receipt of a complete NOC application.

(e) Approval to replace or substantially alter emission control technology ~~((shall))~~ will become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18

months or more, or if construction is not completed within a reasonable time. The Agency may extend the 18-month period upon satisfactory showing that an extension is justified. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

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.

AMENDATORY SECTION**Rule 6.1.11 Change of Conditions**

(a) The owner or operator of a stationary source may request, at any time, a change in conditions of an approval order issued by the Agency and the Agency may approve the request provided the Agency finds that:

(1) The change in conditions will not cause the source to exceed an emissions standard;

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

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

(4) The revised order ~~((will))~~ continues to require BACT, as defined at the time of the original approval, for each new stationary source approved by the order except where the Federal Clean Air Act requires LAER; and

(5) The revised order meets the requirements of Rule 6.1, as applicable.

(6) If the order was issued under WAC 173-400-~~((44))~~ 700 through 750 or WAC 173-400-800 through 860, the revised order will meet any applicable requirements of ~~((that))~~ those sections.

(b) Actions taken under this rule are subject to the public involvement provisions of Rule 6.1.3.

(c) Requests ~~((shall))~~ must be made on forms provided by the Agency and ~~((shall))~~ must follow the procedures and timelines for an NOC application as specified in Rule 6.1. The fee schedule found in Rule 3.3 ~~((shall))~~ also applies to these requests.

~~((e))~~ (d) Changes involving construction, installation or establishment of a stationary source or modification of an existing source require approval under Rule 6.1(a).

AMENDATORY SECTION**Rule 6.1.12 Voluntary Limits on Emissions**

(a) Upon request by the owner or operator of a source, the Agency ~~((shall))~~ will issue a regulatory order that limits the source's 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 rule ~~((shall))~~ must be less than the source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70A, ~~((94))~~ 15 RCW and the FCAA, including Washington State Implementation Plan. The term "condition" refers to limits on production or other limitations, in addition to emissions limitation.

(c) Any order issued under this rule (~~shall~~) must include monitoring, record keeping and reporting requirements (~~sufficient~~) to ensure that the source complies with any condition established under this rule. Monitoring requirements (~~shall~~) must 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 rule (~~shall be~~) is subject to the notice and comment procedures under Rule 6.1.3.

(e) The terms and conditions of a regulatory order issued under this rule (~~shall be~~) are federally enforceable (~~is~~) upon approval of this rule as an element of the Washington State Implementation Plan. Any proposed deviation from a condition contained in an order issued under this rule (~~shall~~) requires revision or revocation of the order.

AMENDATORY SECTION
RULE 6.2 OUTDOOR BURNING

To help maintain air quality at desirable levels, (~~it~~) is the policy of (~~the Olympic Region Clean Air agency~~) (~~ORCAA~~) (~~to achieve and maintain high levels of air quality, and~~) to (~~this end~~) minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the Board (~~does hereby~~) declares that such fires should be allowed only on a limited basis under strict regulation and close control. (~~It is the further policy of~~) The Board (~~to~~) also encourages the fostering and development of an alternate technology or method of disposing of natural vegetation, which is reasonably economical and less harmful to the environment.

AMENDATORY SECTION
Rule 6.2.2 Definitions

When used in this Rule the following definitions (~~shall~~) apply:

"Agricultural burning" means 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

AMENDATORY SECTION

Rule 6.2.3 No (~~residential or land clearing burning is allowed in the following cities and/or UGAs~~) Burn Areas:

No residential or land clearing burning is allowed in the following cities and/or UGAs:

Clallam	Grays Harbor	Jefferson	Mason	Pacific	Thurston
Carlsborg Clallam Bay Forks Joyce Port Angeles Sekiu Sequim	Aberdeen Hoquiam	Port Townsend Irondale Port Hadlock	Allyn Belfair Shelton	Ilwaco Long Beach Raymond Seaview South Bend	Bucoda Grand Mound Lacey Olympia Rainier Tenino Tumwater Yelm

task force established in RCW 70A.~~(94)~~15.~~(6528)~~5090 or other authoritative source on agricultural practices. Propane flaming (~~for the purpose~~) of vegetative debris (~~removal~~) is considered commercial agricultural burning.

"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

"Burn ban" means an "air pollution episode", or a period of "impaired air quality" as defined in RCW 70A.~~(94)~~15.~~(473)~~3580.

"Extinguish" means to put out a fire completely. It must be cool to the touch and not smoldering or smoking.

"Firewood" means clean, dry, seasoned, untreated wood used as fuel in a (~~Native American~~) Native American ceremonial fire or recreational fire.

"Land Clearing Burning" means 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~~) differently (~~purpose~~), or left unused).

"Outdoor Burning" means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.

"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.

"Recreational Fire" means cooking fires or campfires using firewood which occur in designated areas on public lands, or on private property. Fires used for disposal (~~purposes~~) are not recreational fires.

"Residential Burning" means the outdoor burning of leaves, clippings, prunings, and other yard and gardening refuse originating on the maintained area of residential property (i.e., lands immediately adjacent and (~~in close proximity to~~) near a human dwelling) and burned on such lands by the property owner and/or another responsible person.

"Urban Growth Area" (UGA) means land, generally including land associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.110.

AMENDATORY SECTION**Rule 6.2.5 Prohibitions and restrictions ~~((WAC 173-425-050))~~**

(a) It ~~((shall be))~~ is unlawful for any person to cause or allow an outdoor fire containing prohibited materials which include but are not limited to garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper, cardboard, treated wood, processed wood, construction/demolition debris, metal, or any substance which when burned releases toxic emissions, dense smoke, or obnoxious odors. A limited amount of paper may be used to start the fire. ORCAA may allow the limited burning of prohibited materials for fire training.

(b) It is illegal to burn vegetation originating in any area where burning is prohibited as listed in Rule 6.2.3.

(c) A person capable of extinguishing the fire must ~~((be in attendance))~~ attend it at all times, and the fire must be extinguished before leaving it.

(d) Containers (not regulated under WAC 173-400-070 (1)) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other non-combustible material with openings not larger than one-half inch.

(e) The use of burn barrels is illegal.

(f) A fire protection agency, county, conservation district, or other governing body may enforce its own regulations that are stricter than those set forth in this rule.

(g) It ~~((shall be))~~ is unlawful for any person to cause or allow an emission from outdoor burning that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

AMENDATORY SECTION**Rule 6.2.6 Curtailment ~~((WAC 173-425-050))~~**

(a) No outdoor fire ~~((shall be))~~ can be ignited in a geographical area where an impaired air quality or episode ~~((burn ban))~~ has been declared.

(b) The person responsible for an outdoor fire must extinguish the fire when a burn ban is declared.

(c) Three (3) hours after a burn ban is declared smoke visible from all types of outdoor burning, except land clearing burning, ~~((will))~~ constitutes prima facie evidence of unlawful outdoor burning.

(d) Eight (8) hours after a burn ban is declared smoke visible from land clearing burning ~~((will))~~ constitutes prima facie evidence of unlawful outdoor burning.

AMENDATORY SECTION**Rule 6.2.7 Recreational Burning**

The following burn practices ~~((shall))~~ must be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high. ~~((WAC 173-425-060))~~

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

(c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated

areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.

AMENDATORY SECTION**Rule 6.2.8 Permit Program**

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for ~~((particular))~~ specific types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, failed to contain pertinent information or the permitted activity has caused a nuisance.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.~~((94))15.~~~~((430))3150~~ and RCW 70A.~~((94))15.~~~~((431))3160~~.

(c) Types of burning that require a written permit.

(1) Agricultural burning ~~((shall))~~ must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all ~~((of))~~ the following requirements are met:

(i) Fire training ~~((shall))~~ must not occur during a burn ban.

(ii) The fire must be for training ~~((purposes))~~.

(iii) The agency conducting the training fire ~~((shall))~~ must obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

(3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

(4) Land Clearing Burning ~~((shall))~~ requires an approved written permit. ~~((abide by Rule 6.2 and all e))~~ Conditions of the written permit issued by ORCAA or another permitting agency are enforceable.

(5) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning ~~((shall))~~ must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(6) Weed abatement fires.

(7) Residential fires in Thurston County.

The permit application for the above permits ~~((shall))~~ must be accompanied by the applicable fee, pursuant to Rule 3.4.

(d) Where residential burning is allowed and no written burn permits are issued, burning ~~((shall))~~ must abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile ~~((shall))~~ may be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.

AMENDATORY SECTION

RULE 6.3 ASBESTOS

The Board of Directors of the ~~ORCAA ((~~Lympic Region Clean Air Agency~~))~~ recognize ~~((that))~~ asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma, or asbestosis. The Board has ~~((therefore,))~~ determined ~~((that))~~ any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects ~~((in order))~~ to protect public health. ~~((In addition, t))~~ The Board ~~((has))~~ adopted these regulations to coordinate with the EPA asbestos NESHAP, the OSHA asbestos regulation, the Washington Department of Labor and Industries asbestos regulations, the Washington Department of Ecology Dangerous Waste regulation, and the solid waste regulations of Clallam, Grays Harbor, Jefferson, Mason, Pacific, and Thurston counties.

AMENDATORY SECTION

Rule 6.3.1 Definitions

When used in this Rule the following definitions ~~((shall))~~ apply:

Asbestos - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

Asbestos-containing Materials (ACM) - Any material containing more than one percent (1%) asbestos as determined using the method specified in EPA *Method for the Determination of Asbestos in Building Materials* EPA/600/R-93/116, July 1993, or more effective method as approved or required by EPA. This definition includes all loose vermiculite used as insulation.

Asbestos-containing Waste Material - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

Asbestos Hazard Emergency Response Act (AHERA) Building Inspector - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Appendix C to Subpart E.I.B.3) and whose certification is current.

Asbestos Hazard Emergency Response Act (AHERA) Project Designer - A person who has successfully completed the training requirements for an abatement

project designer established by EPA regulations (40 CFR 763.90(g)) and whose certification is current.

Asbestos Project - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing materials, or any other action that disturbs or is likely to disturb any asbestos-containing materials. It includes the removal and disposal of stored asbestos-containing materials or asbestos-containing waste material. This term 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.

(-)Asbestos Survey - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86 and 40 CFR 763.87), or an alternate method that has received prior written approval from the ~~((Control Officer))~~ Executive Director, or designee, to determine whether materials or ~~((structures))~~ buildings to be worked on, removed, disturbed, or demolished, contain asbestos.

Component - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing materials.

Demolition - Wrecking, razing, dismantling, burning via fire protection agency training, or removal of any load supporting structural member of a structure, including any related handling operations, making all or part of the structure permanently uninhabitable or unusable.

Friable Asbestos-containing Materials - Asbestos-containing materials that when dry can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the materials ~~((in the course of))~~ during demolition, renovation, or disposal.

HEPA Filter - A High Efficiency Particulate Air filter found in some respirators and vacuum systems. HEPA filters must be capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.97% efficiency.

Leak-Tight Container - A dust-tight and liquid-tight container that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

Liquid Wetting Agent - Water in which a surfactant (detergent) has been added.

Non-friable Asbestos-containing Materials - Asbestos-containing materials that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or ~~((by the))~~ other forces expected to act on the materials ~~((in the course of))~~ during demolition, renovation, or disposal.

Renovation - To make changes or repairs, other than demolition, to a structure.

Single-Family Residence - Any structure containing space for use such as living, sleeping, food preparation and eating. This term includes houses, mobile homes, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include multiple-family units ~~((i.e.))~~ such as apartments, duplexes, condominiums, etc.), nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

Surfacing Material - Material (~~(that is)~~) sprayed or troweled on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

Suspect Material - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (except 3-tab composite roofing), fire barriers, gaskets, flooring material, and cement or concrete siding.

Thermal System Insulation - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

Visible Asbestos Emissions - Any asbestos-containing materials that are visually detectable without the aid of instruments.

Waste Generator - Any owner or operator of a facility whose act or process produces asbestos-containing waste material.

Waste Shipment Record - The shipping document required to be originated and signed by the owner or operator, used to track, and substantiate the disposition of asbestos-containing waste material.

Reviser's note: The typographical 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.

AMENDATORY SECTION

Rule 6.3.2 Asbestos Survey Requirements

(a) Renovation. An asbestos survey is required for any renovation involving 48 square feet, or more, of suspect asbestos material. The property owner or the owner's agent (~~(shall)~~) must determine whether there are suspect asbestos-containing materials (ACM) in the work area and obtain an asbestos survey by an Asbestos Hazard Emergency Response Act (AHERA) building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of a single-family residence. In lieu of a survey, the owner of the residence may collect samples to have analyzed by a National Voluntary Laboratory Accreditation Program (NVLAP) certified lab per 40 CFR 763.87.

(1) A summary of the results of the asbestos survey (~~(shall)~~) must be available at the work site and communicated to all persons who may (~~(come into contact with)~~) encounter the material.

(2) If there are no suspect materials in the work area, this determination (~~(shall)~~) must be available at the work site and communicated to all persons involved in the renovation.

(3) It is not required that an AHERA building inspector sample any material presumed to be ACM.

(b) Demolition. It (~~(shall be)~~) is unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey, by an AHERA building inspector, of the structure.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be ACM.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey (~~(shall)~~) must be available at the work site and communicated

to all persons who may (~~(come into contact with)~~) encounter the material.

AMENDATORY SECTION

Rule 6.3.3 Controlled and Regulated Substances

(a) (~~(No person shall)~~) It is unlawful to cause or allow visible asbestos emissions, including emissions from asbestos waste materials:

(1) On public or private lands, on developed or undeveloped properties and on any open uncontrolled and non-designated disposal sites;

(2) During the collection, processing, handling, packaging, transporting, storage, and disposal of any asbestos-containing waste material; or

(3) From any fugitive source.

AMENDATORY SECTION

Rule 6.3.4 Notification Requirements

(a) It (~~(shall be)~~) is unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the (~~(Control Officer)~~) Executive Director, or designee, has been submitted to the ORCAA on approved forms, in accordance with the notification period requirements contained in 6.3.4(c) Notification Period:

(1) Notification is required for all demolitions of structures with a footprint greater than 120 square feet, even if no ACM is present. All other demolition requirements remain in effect.

(2) Per Rule 3.5, ((F))the appropriate nonrefundable fee must accompany the notification ((shall be accompanied by the appropriate nonrefundable fee as set forth in Rule 3.5)).

(3) A copy of the notification, all amendments to the notification, the asbestos survey, and a work plan for an alternate means of compliance (~~(shall)~~) must be available for inspection (~~(at all times)~~) at the asbestos project or demolition site.

(4) Notification for multiple asbestos projects or demolitions may be filed by a property owner or agent on one form if all the following criteria are met:

(i) The same contractor will perform the work ((will be performed)) continuously ((by the same contractor)); and,

(ii) A work plan is submitted that includes: a map clearly identifying the structures involved in the project; the amount and type of ACM in each structure; and the schedule for performing asbestos project and demolition work; and,

(iii) The project must be bid as a group under the same contract; and

(iv) The structures must be on contiguous property.

(b) Exemptions from Notification

(1) Notification is not required for asbestos projects containing less than 10 linear feet on pipe or 48 square feet (per structure, per calendar year) of any ACM.

(2) Notification is not required for removal and disposal of non-friable caulking, window glazing and roofing.

(c) Notification Period

Project	Notification Period
Asbestos	10 days prior to commencement of work on project
Asbestos-NESHAP ¹	14 days prior to commencement of work on project
Asbestos Project Amendments	Prior Notice
Demolition	14 days prior to commencement of work on project
Emergency	Prior Notice

¹ Projects subject to 40 CFR Part 61 Subpart M must comply with the 14-day notification period.

(1) The duration of an asbestos project ~~((shall))~~ must not exceed one year from date of submission of the original notification.

(2) The ~~((Control Officer))~~ Executive Director, or designee, may waive the notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) ACM. All other asbestos project and demolition requirements remain in effect.

AMENDATORY SECTION

Rule 6.3.5 Annual Notification

(a) A property owner or agent may file one annual notification for asbestos projects on one or more structures, vessels, or buildings during each calendar year if all ~~((of))~~ the following conditions are met:

(1) The annual notification ~~((shall))~~ must be filed with ORCAA before beginning work on any asbestos project included in the annual notification;

(2) The annual notification covers only those structures, vessels, or buildings from the same industrial grouping located on contiguous or adjacent properties and are under common ownership and control.

(3) The total amount of ACM removed ~~((must be))~~ is less than 260 linear feet on pipes or less than 160 square feet of any ACM; and

(4) The property owner or agent submits quarterly written reports to the ~~((Control Officer))~~ Executive Director, or designee, on ORCAA-approved forms within 15 days after the end of each calendar quarter.

AMENDATORY SECTION

Rule 6.3.6 Asbestos Project Amendments

(a) The original applicant will submit ~~((A))~~ an amendment ~~((shall be submitted by the original applicant,))~~ on or before the completion date on file to the ~~((Control Officer))~~ Executive Director, or a designee, for the following changes in a project:

- (1) Change in the quantity of asbestos to be removed; or
- (2) Changes in the ACM that will be removed; or
- (3) Change of contractor; or
- (4) Changes in the start date, completion date, or work schedule, including hours of work.

AMENDATORY SECTION

Rule 6.3.7 Emergencies—Exceptions to Advance Notification Period

(a) The ~~((Control Officer))~~ Executive Director, or designee, may waive the advance notification period, if the property owner or agent submits a written request that demonstrates to the ~~((Control Officer))~~ Executive Director, or designee, that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was an event that resulted in a public health or safety hazard;

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

(3) ACM were encountered that were not identified during the asbestos survey; or,

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

AMENDATORY SECTION

Rule 6.3.8 Asbestos Removal Requirements Prior to Renovation or Demolition

(a) Except as provided in Rule 6.3.8(b), it ~~((shall be))~~ is unlawful for any person to cause or allow any demolition or renovation that may disturb ACM or damage a structure ~~((so as))~~ to preclude access to ACM for future removal, without first removing all ACM in accordance with the requirements of this regulation. ACM need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(b) Inaccessible Asbestos Removal Requirements. ACM may be removed during demolition, if the property owner demonstrates to the ~~((Control Officer))~~ Executive Director, or designee, through a work plan, that the ACM is not accessible such as:

(1) Structures or buildings that are structurally unsound and in danger of imminent collapse;

(2) Conditions that are immediately dangerous to life and health;

(3) Unable to access all asbestos material prior to demolition.

(4) The owner must submit:

(i) written determination of the hazard by an authorized government official or a licensed structural engineer; and,

(ii) a work plan outlining the procedures that will be followed to control asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

AMENDATORY SECTION

Rule 6.3.9 Procedures for Asbestos Projects

(a) Training Requirements. It ~~((shall be))~~ is unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety and Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certificate is current. This certifi-

cation requirement does not apply to individuals who work on asbestos projects on their own single-family residence(s).

(b) Asbestos Work Practices. Except as provided in Rule 6.3.4 (b)(2) of this Rule, it ~~((shall be))~~ is unlawful for any person to cause or allow the removal of ACM unless all the following requirements are met:

(1) The asbestos project ~~((shall))~~ must be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area ~~((shall))~~ must be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it ~~((shall))~~ must be equipped with transparent viewing ports, if feasible, and ~~((shall))~~ must be maintained in good working order. Emissions from the negative air exhaust ~~((shall))~~ must be controlled by a HEPA filter.

(3) Absorbent ACM, such as surfacing material and thermal system insulation, ~~((shall))~~ must be saturated with a liquid wetting agent prior to removal. Any unsaturated absorbent ACM exposed during removal ~~((shall))~~ must be immediately saturated with a liquid wetting agent. All absorbent asbestos-containing waste material ~~((shall))~~ must be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All asbestos-containing waste material ~~((shall))~~ must be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(4) Nonabsorbent ACM, such as cement asbestos board or vinyl asbestos tile, ~~((shall))~~ must be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent ACM exposed during removal ~~((shall))~~ must be immediately coated with a liquid wetting agent. All nonabsorbent asbestos-containing waste material ~~((shall))~~ must be kept coated with a liquid wetting agent until sealed in leak-tight containers.

(5) Metal components (such as valves and fire doors) that have internal ACM are exempt from the requirements of 6.3.4 if all access to the ACM is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the ACM from the environment.

(6) ACM that are being removed, have been removed, or may have fallen off components during an asbestos project ~~((shall))~~ must be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged, unless enclosed inside a negative-pressure enclosure.

(7) The exterior of each leak-tight container ~~((shall))~~ must be free of all asbestos residue and ~~((shall be))~~ permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(8) ~~((No))~~ It is unlawful to allow visible asbestos emission ~~((shall result))~~ from an asbestos project. Leak-tight containers ~~((shall))~~ must not be dropped, thrown, slid, or otherwise damaged.

(9) The asbestos-containing waste material ~~((shall))~~ must be stored in a controlled area until transported to an approved waste disposal site.

(10) It ~~((shall be))~~ is unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of ACM. Such unlawful activity includes, but is not limited to: N((e.g. n))ot removing all ACM in a structure

scheduled for demolition; ~~((or))~~ partially removing ACM and leaving remaining ACM in a state ~~((that))~~ mak((es))ing it more susceptible to being disturbed; ~~((or))~~ or, leaving it on the ground, outside and open to the environment ~~((or))~~.

AMENDATORY SECTION

Rule 6.3.10 Disposal of Asbestos—Containing Waste Material

(a) Except as provided in 6.3.10(c) of this Regulation, ACM must be transferred offsite within 10 days of removal. The ACM may be transferred to an approved temporary storage site or to a waste disposal site operated in accordance with 40 CFR 61.154 or 40 CFR 61.155.

(b) Temporary Storage Site. A person may establish a facility for ~~((the purpose of))~~ collecting and temporarily storing asbestos-containing waste material if the facility is approved by the ~~((Control Officer))~~ Executive Director, or designee, and all the following conditions are met:

(1) Accumulated asbestos-containing waste material ~~((shall))~~ must be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material ~~((shall))~~ must be stored in leak-tight containers and the leak-tight containers ~~((shall))~~ must be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator ~~((shall))~~ must not exceed 90 days.

(c) Disposal of Asbestos Cement Pipe. Asbestos cement water pipe used on a public right-of-way ~~((s))~~ or public easement ~~((shall be))~~ is excluded from the disposal requirements of Rule 6.3.10 if the following conditions are met:

(1) Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least three (3) feet or more of non-asbestos fill material and the state, county or city authorities are notified in writing of buried asbestos cement pipe; and

(2) All asbestos-containing waste material, including asbestos cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos contaminated material, debris, or containers, ~~((shall))~~ will be subject to the requirements of Rule 6.3.

AMENDATORY SECTION

Rule 6.3.11 Compliance with other Rules

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the United States Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Department of Labor and Industries. Nothing in the Agency's rules ~~((shall be construed as))~~ excuse((ing)) any person from complying with any other applicable local, state, or federal requirement.

NEW SECTION**RULE 6.4 NOTICE OF INTENT TO OPERATE**

(a) A Notice of Intent to Operate may be filed with the Agency in lieu of a Notice of Construction for the following sources:

(1) Temporary Portable Stationary Sources. Relocation of temporary portable stationary sources having a valid Order of Approval from Ecology or a local air pollution control agency in the State of Washington.

(2) Stationary Sources based on Potential to Emit. Any stationary source that will have a combined uncontrolled potential to emit from all emission units less than:

(i) 0.5 tons per year of any criteria pollutant; and,

(ii) 1.0 tons per year of total criteria pollutants and VOC combined; and,

(iii) 0.005 tons per year of lead; and,

(iv) The de minimis emission rate specified for each Toxic Air Pollutant listed in WAC 173-460-150; and,

(v) 1.0 tons per year of ozone depleting substances combined.

(3) Gasoline Dispensing Facilities (GDF). Construction or modification of a gasoline dispensing facility, or replacement or substantial alteration of vapor recovery systems, provided that:

(i) The installed equipment is in accordance with the current California Air Resources Board (CARB) Executive Orders as defined in Rule 8.12 listed on the GDF Notification form effective at the time of the filing;

(ii) The GDF is not part of a stationary source subject to the Air Operating Program (Rule 5);

(iii) The GDF is not subject to any of the Stage II requirements in WAC 173-491-040(5); and

(iv) The project does not involve the removal of a Stage II vapor recovery system.

(b) A Notice of Intent to Operate must be filed with the agency for nonroad engines (as defined in WAC 173-400-035) as required by WAC 173-400-035.

(c) A complete Notice of Intent to Operate (NOI) application must be filed at least 15 days prior to starting operation of the source.

(d) NOI applications will be made on standard forms of the Agency and will include:

(1) All information requested in the applicable standard forms;

(2) If submitting a NOI for a stationary source qualifying for the exemption based on potential to emit under Rule 6.4 (a)(2), documentation verifying the stationary source's potential to emit;

(3) If submitting a NOI for a nonroad engine, the notice must include all the information required by WAC 173-400-035 (4) or (5), as applicable;

(4) Any additional information requested by the Agency to verify that operation of the stationary source will comply with applicable air pollution control requirements; and,

(5) Applicable fee per Rule 3.6.

(e) Condition of operation. The Agency may establish enforceable conditions of operation, through issuance of a regulatory Order, as are necessary to assure compliance with applicable air pollution control requirements.

(f) Temporary Portable Stationary Sources - Requirements for Operation. Sources submitting a Notice of Intent per Rule 6.4 (a)(1) must meet the following requirements:

(1) The operation must not cause a violation of ambient air quality standards;

(2) If the operation is in a nonattainment area, it must not interfere with the scheduled attainment of ambient standards;

(3) The temporary source must operate in compliance with all applicable air pollution rules and regulations;

(4) A temporary portable stationary source that is considered a major stationary source within the meaning of WAC 173-400-710 or WAC 173-400-810 must also comply with the requirements in WAC 173-400-700 through 750 and WAC 173-400-800 through 860 and Rule 6.1.3(b) as applicable;

(5) Any operating condition in an Order previously issued to a temporary source will remain in effect upon relocating the source within ORCAA's jurisdiction unless specifically superseded by condition in a subsequent Order.

(g) Where work, for which a Notice of Intent to Operate is required, is commenced prior to making application and receiving approval, the Executive Director, or an authorized agent, may investigate as part of the Notice of Intent review. In such a case, an investigation fee, in addition to fees of Rule 3.3, may be assessed in an amount up to 3 times the Notice of Intent fees of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

AMENDATORY SECTION**RULE 7.1 INTERFERENCE OR OBSTRUCTION**

It is unlawful for any (~~(No)~~) person (~~(shall)~~) to willfully interfere with or obstruct the (~~(Control Officer)~~) Executive Director or any Agency employee in performing any lawful duty.

AMENDATORY SECTION**RULE 7.2 FALSE OR MISLEADING STATEMENTS**

It is unlawful for any (~~(No)~~) person (~~(shall)~~) to willfully make a false or misleading statement to the Board or its representative as to any matter within the jurisdiction of the Board.

AMENDATORY SECTION**RULE 7.3 UNLAWFUL REPRODUCTION OR ALTERATION OF DOCUMENTS**

It is unlawful for any (~~(No)~~) person (~~(shall)~~) to reproduce or alter, or cause to be reproduced or altered, any order, registration certificate or other paper issued by the Agency if the purpose of such reproduction or alteration is to evade or violate any provision of these Regulations or any other law.

AMENDATORY SECTION**RULE 7.4 DISPLAY OF ORDERS AND CERTIFICATES: REMOVAL OR MUTILATION PROHIBITED**

(a) Any order or registration certificate required to be obtained by these Regulations (~~(shall)~~) must be available on the premises designated on the order or certificate.

(b) (~~(In the event that)~~) If the Agency requires an order or registration certificate to be displayed, it (~~(shall)~~) must be posted.

(c) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to mutilate, obstruct or remove any order or registration certificate unless authorized to do so by the Board or the ~~((Control Officer))~~ Executive Director.

AMENDATORY SECTION

RULE 7.5 EMISSION OF AIR CONTAMINANT—CONCEALMENT AND MASKING

~~((WAC 173-400-040))~~

(a) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the installation or use of any device or use of any means, which conceals or masks an emission of air contaminant, which would otherwise violate any provisions of ORCAA's Regulations or chapter 173-400 WAC.

(b) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the installation or use of any device or use of any means designed to conceal or mask the emission of an air contaminant, which causes detriment to health, safety, or welfare of any person, or cause damage to property or business.

AMENDATORY SECTION

RULE 7.6 EMISSIONS OF AIR CONTAMINANT OR WATER VAPOR: DETRIMENT TO PERSONS AND/OR PROPERTY

It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by these Regulations, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

AMENDATORY SECTION

Rule 8.1.1 Definitions

"Adequate Source of Heat" means a furnace or heating system, connected, or disconnected from its energy source, designed with the ability to maintain seventy degrees Fahrenheit (70°F) at a point three (3) feet above the floor in all normally inhabited areas of a dwelling. Garages are specifically excluded.

"Certified" means that a woodstove meets emission performance standards when tested by an accredited independent laboratory and 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.

"Cook Stove" means an appliance designed with the primary function of cooking food and containing an integrally built-in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan, and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room ~~((shall))~~ is not ~~((be))~~ considered a cook stove.

"Fireplace" means a permanently installed masonry fireplace; or a 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.

"First Stage of Impaired Air Quality" means the same as Stage 1 burn ban and is declared when meteorological conditions are predicted to cause fine particulate levels to exceed 35 micrograms per cubic meter measured on a 24-hour average, within 48 hours.

"Second Stage of Impaired Air Quality" means the same as Stage 2 burn ban and is declared when a first stage of impaired air quality has been in force and has not been sufficient to reduce the increasing fine particulate pollution trend ~~((RCW 70.94.473))~~. A second stage burn ban may be called without calling a first stage burn ban only when all ~~((of))~~ the following occur ~~((RCW 70.94.473 (e)(ii)))~~:

(a) Fine particulate levels have reached or exceeded 25 micrograms per cubic meter, measured on a 24-hour average~~((+))~~;

(b) Meteorological conditions have caused fine particulate levels to rise rapidly;

(c) Meteorological conditions are predicted to cause fine particulate levels to exceed the 35 micrograms per cubic meter, measured on a 24-hour average, within 24 hours; and,

(d) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.

"Nonaffected Pellet Stove" means that a pellet stove has an air-to-fuel ratio equal to or greater than 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.

"Salt Laden Wood" means any species of wood that has been soaked in salt water.

"Seasoned Wood" means clean, untreated wood of any species that has been ~~((sufficiently))~~ dried ~~((so as to))~~ and contains twenty percent (20%)₂ or less₂ moisture by weight.

"Solid Fuel Burning Device" means a device that burns seasoned wood, coal, or any other nongaseous or nonliquid fuels except those prohibited by Rule 8.1.3. This also includes devices used for aesthetic or a space heating purpose, which has ~~((a))~~ heat input less than one million British thermal units per hour. A cook stove is specifically excluded from this definition.

"Treated Wood" mean wood of any species that has been chemically impregnated, painted, or similarly modified to improve structural qualities or resistance to weathering or deterioration.

"Woodstove" means an enclosed solid fuel burning device capable of and intended for space heating and/or domestic water heating.

AMENDATORY SECTION

Rule 8.1.2 General Emission Standards

(a) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow an emission from a solid fuel burning device that unreasonably interferes with the use and enjoyment of property or workplace.

(b) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent (20%) opacity as determined by EPA Method 9. The provision of this requirement ~~((shall))~~ will not apply during the starting of a new fire for a period not to exceed 20 minutes in any 4-hour period.

(c) Smoke visible from a chimney, flue, or exhaust duct, in excess of the opacity standard ~~((shall))~~ will constitute 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.

AMENDATORY SECTION

Rule 8.1.3 Prohibited Fuel Types

It is unlawful for any ~~((A))~~ person ~~((shall not))~~ to cause or allow any of the following materials to be burned in a solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastic products;
- (d) Rubber products;
- (e) Animals;
- (f) Asphalt products;
- (g) Petroleum products;
- (h) Paints and chemicals;
- (i) Salt laden wood; or
- (j) Any substance that normally emits dense smoke or obnoxious odors.

AMENDATORY SECTION

Rule 8.1.4 Curtailment

(a) Whenever the Agency has declared a Stage 1 burn ban for a geographic area, a person within that geographic area with an adequate source of heat other than a solid fuel burning device ~~((shall))~~ must not operate any solid fuel burning device, unless the solid fuel burning device is one of the following:

- (1) Certified; or
- (2) A nonaffected pellet stove.

(b) Whenever the Agency has declared a Stage 2 burn ban for a geographic area, a person within that geographical area with an adequate source of heat other than a solid fuel burning device ~~((shall))~~ must not operate any solid fuel burning device.

(c) The affected geographic area of a declared Impaired Air Quality ~~((shall))~~ will be determined by the Executive Director or their designee.

(d) A person responsible for an applicable solid fuel burning device already in operation at the time Impaired Air Quality is declared ~~((shall))~~ must withhold new solid fuel for the duration of the Impaired Air Quality. Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of the Impaired Air Quality ~~((shall))~~ will constitute 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 a solid fuel burning device.

(e) For the sole purpose of a contingency measure to meet the requirements of Section 172 (c)(9) of the Federal Clean Air Act, the use of solid fuel burning devices, except fireplaces as defined in RCW 70A.~~((94))15.~~~~((453))3510(3)~~, woodstoves meeting the standards set forth in RCW 70A.~~((94))15.~~~~((457))3530~~ or pellet stoves either certified or issued an exemption by the EPA in accordance with Title 40, Part 60 of the Code of Federal Regulations will be prohibited if the EPA, in consultation with Ecology and the Agency, makes written findings that:

(1) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and,

(2) Emissions from solid fuel burning devices from a ~~((particular))~~ geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

(3) A prohibition issued under 8.1.4(e) ~~((shall))~~ will not apply to a person that does not have an adequate source of heat without burning wood.

(4) The area is to consist of all areas within the city limits of Lacey, Olympia, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

AMENDATORY SECTION

Rule 8.1.5 Exemptions

Written exemptions granted by the Agency ~~((shall be))~~ are valid for one (1) year from date of issue. Exemptions may be canceled at any time if the original request is found to be incorrect, inaccurate, or fraudulent. Exemptions ~~((shall))~~ will apply only to the use of solid fuel burning device during an Impaired Air Quality and not to the other rules of this regulation or other applicable regulations.

(a) Emergency exemption. In an emergency ~~((situation))~~ the Agency may issue a written solid fuel burning device emergency exemption. An emergency ~~((situation shall))~~ may include, but is not limited to, a situation where a person demonstrates that their heating system, other than a solid fuel heating device, is inoperable for reasons other than their own actions or a situation where the heating system has been involuntarily disconnected by a utility company or other fuel supplier.

(b) Inadequate heat source. Written exemptions may be issued by the Agency if a person can demonstrate that:

(1) The structure was originally designed with a solid fuel burning device as the source of heat; or

(2) The existing heat source, fueled with other than solid fuel, will not provide adequate heat.

AMENDATORY SECTION

Rule 8.1.7 Sale and Installation of Uncertified Woodstoves

It ~~((shall be))~~ is unlawful to install, sell, offer for sale, advertise for sale, or otherwise transfer an uncertified solid fuel burning device unless the device has been rendered permanently inoperable as a combustion device.

AMENDATORY SECTION

Rule 8.1.8 Disposal of Uncertified Woodstoves

~~((At such time as))~~ When an uncertified solid fuel burning device is to be permanently removed from its location it ~~((shall))~~ must be rendered inoperable as a solid fuel burning device. A removed uncertified solid fuel burning device ~~((shall))~~ must not be sold, bartered, traded, or given away for a purpose other than recycling of the materials to form something other than an uncertified solid fuel burning device.

AMENDATORY SECTION**RULE 8.2 GENERAL STANDARDS FOR MAXIMUM VISUAL EMISSIONS**

~~((see WAC 173-400-040))~~

All facilities, sources and emissions units are required to meet the visual emission standards of this rule except when a visual emission standard is listed in another rule of these Regulations, or where a Notice of Construction lists a more stringent visual emission standard, or where an applicable State of Washington or Federal Regulation lists a visual emission standard that is more stringent, such standards will take precedent over a general emission standard listed in this rule.

(a) In equipment or facilities, including boilers using hogged fuel, regardless of their date of installation, it is unlawful for any ~~((no))~~ person ~~((shall))~~ to cause or allow the emission to the outdoor atmosphere, for more than three (3) minutes in any one hour, of a gas stream containing air contaminants that are greater than 20% opacity.

(b) Observations ~~((shall))~~ must be made by trained and certified observers or by LIDAR instrumentation.

(c) The exceptions to Rule 8.2 are as follows:

(1) Emission occurring due to soot blowing or grate cleaning may be greater than 20% opacity; providing the operator can demonstrate that soot blowing, or grate cleaning will not exceed a total of 15 minutes in any 8 consecutive hours. This practice, except for testing and trouble(-)shooting, is to be scheduled for the same approximate times each day and ORCAA ~~((shall))~~ must be advised of the schedule.

(2) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed 20%.

AMENDATORY SECTION**RULE 8.3 GENERAL STANDARDS FOR MAXIMUM PARTICULATE MATTER**

~~((see WAC 173-400-040, 050, 060, and 070))~~

All sources and emission units are required to meet the emission standards of this rule, except when a standard is listed in another rule of these Regulations, or where a Notice of Construction Approval Order lists a more stringent standard, or where an applicable State of Washington or Federal Regulation lists a standard that is more stringent, such standards will take precedent over a general emission standard listed in this rule. Further, all existing emission units are required to use reasonably available control technology (RACT), which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of ORCAA Regulations. When current controls are determined to be less than RACT, ORCAA ~~((shall))~~ will, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order to the source or source category for installation of RACT. Particulate test procedures, on file at the Authority, will be used to determine compliance. The Agency~~((authority))~~ requires the inclusion of ~~((the Method 5 back half))~~ condensable particulate matter, for determining compliance with the particulate matter standards in this rule.

(a) In equipment or facilities, except boilers using hog fuel, it is unlawful for any ~~((no))~~ person ~~((shall))~~ to cause or allow the emission of particulate matter to the outdoor atmo-

sphere from any single source in excess of 0.10 grains per standard cubic foot of gas (calculated at 7% oxygen). Particulate test procedures, on file at the ~~((Authority))~~ Agency, will be used to determine compliance. ~~((The Authority includes the Method 5 back half condensable particulate matter for determining compliance with particulate matter standards.))~~

(b) Hogged Fuel Boilers: It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the emission of particulate matter to the outdoor atmosphere from any single source in excess of 0.20 grains per standard cubic foot of gas (calculated at 7% oxygen). Particulate test procedures, on file at the ~~((Authority))~~ Agency, will be used to determine compliance. ~~((The Authority includes the Method 5 back half condensable particulate matter for determining compliance with particulate matter standards.))~~

(c) Fugitive particulate material. Reasonable and/or appropriate precautions ~~((shall))~~ must be taken to prevent fugitive particulate material from becoming airborne;

(1) When handling, loading, unloading, transporting, or storing particulate material; or,

(2) When constructing, altering, repairing, or demolishing a building; or its appurtenance; or a road; or,

(3) From an untreated open area.

For ~~((the purpose of))~~ this rule, fugitive particulate means particulate material which is generated incidental to an operation, process or procedure and is emitted into the open air from points other than an opening designed for emissions such as stacks or vents.

(d) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow any construction, alteration, repair, maintenance, or demolition work without taking precautions to prevent air pollution.

(e) Fallout. It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source which interferes unreasonably with the use and enjoyment of the property upon which the material is deposited.

AMENDATORY SECTION**RULE 8.4 INCINERATION OR CREMATION OPERATION**

(a) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow any incineration or cremation operation within the ~~((Authority's))~~ Agency's jurisdiction except in an incinerator or crematory provided with emission control apparatus found by the ~~((Control Officer))~~ Executive Director, or a duly designated agent, in advance of such use, to be effective for ~~((the purpose of))~~ air pollution control.

(b) ~~((Incinerator))~~ Operating Hours. It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow an incineration or cremation operation at any time other than daylight hours of the same day, except with written approval of the ~~((Control Officer))~~ Executive Director.

AMENDATORY SECTION**RULE 8.5 ODOR CONTROL MEASURES**

(a) Reasonably available control technology (RACT) ~~((shall))~~ must be installed and operated to mitigate odor-bearing gases emitted into the atmosphere to a minimum, or, so as not to create air pollution.

(b) The Board may establish requirements that the building or equipment be enclosed and ventilated in such a way that all the air, gases and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the outdoor atmosphere.

(c) ~~It is unlawful for any~~ ((No)) person ~~((shall))~~ to cause or allow the emission or generation of any odor from any source, which unreasonably interferes with another person's use, and enjoyment of their property.

AMENDATORY SECTION

RULE 8.6 EMISSION OF TOXIC AIR POLLUTANTS

(a) Sources installed after June 18, 1991, ~~((shall))~~ must meet the requirements of chapter 173-460 WAC, New Sources of Toxic Air Pollutants. For sources installed after June 18, 1991, "Toxic Air Pollutant (TAP)" means any ~~((Class A or Class B))~~ toxic air pollutant listed in WAC 173-460-150 ~~((and/ or WAC 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/ or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds)).~~

(b) No person shall cause or allow the emission of formaldehyde into the ambient air beyond such person's property line, which will result in a concentration exceeding .05 ppm (parts per million) 1 hour average or 61 micrograms per cubic meter 1 hour average.

AMENDATORY SECTION

RULE 8.7 REPORTING OF EXCESS EMISSIONS

(a) Excess emission ~~((shall))~~ must be reported to the ~~((Authority))~~ Agency as soon as possible and within 24 hours unless the ~~((Authority))~~ Agency has established alternative reporting timeline requirements for the source. Upon request by the ~~((Control Officer))~~ Executive Director, the owner(s), or operator(s), of the source(s) ~~((shall))~~ must submit a full written report including the known causes, the corrective actions taken, and the preventative measures to be taken to minimize or eliminate the chance of recurrence.

(b) The owner or operator of a source ~~((shall))~~ has ~~ha~~~~(ve))~~ the burden of proving to the ~~((Authority))~~ Agency that excess emissions were unavoidable.

(c) The following scenarios of excess emissions ~~((shall))~~ will be considered unavoidable:

(1) Excess emissions due to startup or shutdown conditions ~~((shall))~~ will be considered unavoidable provided the source reports as required under Rule 8.7(a) and adequately demonstrates ~~((to the Control Officer that))~~ the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(2) Excess emissions due to scheduled maintenance ~~((shall))~~ will be considered unavoidable if the source reports as required under Rule 8.7(a) and could not have been avoided through better design, scheduling for maintenance, or through better operation and maintenance practices.

(3) Excess emissions due to upsets ~~((shall))~~ will be considered unavoidable provided the source reports, as required under Rule 8.7(a), and demonstrates ~~((to the satisfaction of the Authority that))~~:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during and after the event, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

AMENDATORY SECTION

RULE 8.9 BURNING USED OIL IN LAND BASED FACILITIES

(RCW 70A.~~((94))~~15.~~((610))~~4510)

(a) Except as provided in Rule 8.9(b), a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

(1) Cadmium - 2 ppm maximum

(2) Chromium - 10 ppm maximum

(3) Lead - 100 ppm maximum

(4) Arsenic - 5 ppm maximum

(5) Total Halogens - 1000 ppm maximum

(6) Polychlorinated Biphenyls - 2 ppm maximum

(7) Ash - .1 percent maximum (0.1%)

(8) Sulfur - 1.0 percent maximum (1%)

(9) Flash point - 100 degrees Fahrenheit minimum (100~~((E))~~^oF)

(b) This rule ~~((shall))~~ does not apply to:

(1) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million ~~((btu's))~~ BTUs per hour or used oil burned in facilities permitted by the ~~((Authority))~~ Agency; or

(2) Ocean going vessels.

(c) This rule ~~((shall))~~ does not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission.

Test procedures for determining compliance for the above specifications ~~((shall))~~ must be approved by the ~~((Authority))~~ Agency.

AMENDATORY SECTION

RULE 8.10 FLUORIDES

(a) The following standards ~~((shall))~~ apply to forage:

(1) After sampling ~~((on a))~~ monthly ~~((basis))~~, the yearly average fluoride content of the forage should not exceed 40 ppm Fluoride ion (ppm F), on a dry weight basis, or exceed 60 ppm F for more than two (2) consecutive months or exceed 80 ppm F for more than one (1) month.

(2) In areas where cattle are not grazed continually but are fed cured forage, as hay, for part of the year, the fluoride content of this hay ~~((shall))~~ will be used as it is fed to establish the yearly average. Computation of the yearly average,

~~((shall))~~ must take into consideration, periods when cattle may have been grazed outside the area.

(3) Inasmuch as the standards set forth in paragraph (1) are intended to protect livestock, all forage samples analyzed to determine compliance with such standards ~~((shall))~~ must be representative of forage ~~((actually))~~ consumed by livestock in the area. Also, in determining compliance in particular cases, consideration ~~((shall))~~ will be given to the supplemental feed of the livestock involved.

(b) The following standards ~~((shall))~~ apply to the outdoor atmosphere:

Table 8.10a Maximum Allowable Fluoride

Maximum Allowable Fluoride* Ground-level Concentrations	
Concentration**	Averaging Time
4.5 ppb	12 consecutive hours
3.5 ppb	24 consecutive hours
2.0 ppb	1 calendar year
1.0 ppb	1 calendar month
* as gaseous fluorides calculated as HF	
** parts per billion by volume	

~~((Inasmuch as))~~ Because the standards set forth in Table 8.10 are intended to protect vegetation, the outdoor atmosphere analyzed to determine compliance with such standards ~~((shall))~~ must be ~~((that existing in))~~ from the area of the vegetation to be protected.

(c) Forage or air quality levels higher than those specified in paragraph (1) and Table 8.10 ~~((shall))~~ will be permitted to exist in an area where justified by local conditions and where such higher levels do not or will not be expected to result in significant adverse effects. Similarly, levels lower than those specified in paragraph (1) and Table 8.10 ~~((shall))~~ will be maintained in ~~((particular))~~ cases where significant adverse effects have occurred or can be expected to occur at the specified levels.

AMENDATORY SECTION

RULE 8.11 RECORD KEEPING AND REPORTING

~~T((he purpose of t))his rule ((is to))~~ requires owners or operators of stationary sources of air contaminants to maintain records of, and periodically report to the Olympic Region Clean Air Agency information on the nature and amounts of emissions and other information as may be necessary to determine whether such sources are in compliance with applicable emission limitations and other control measures.

This rule also provides for public availability of emission data reported to the Olympic Region Clean Air Agency by stationary source owners or operators or otherwise obtained by the ~~((Authority))~~ Agency, as correlated with applicable emission limitations.

(a) The owner or operator of any stationary source in the geographical area of the Authority ~~((shall))~~ must, upon notification by the ~~((Control Officer))~~ Executive Director ~~((of the Olympic Region Clean Air Agency))~~, maintain records of the nature and amounts of emissions from such source and/or provide other information deemed necessary by the Control

Officer to determine whether such source is in compliance with the applicable emission limitations and other control measures.

~~((b))~~ ~~((The information pursuant to Rule 8.11(a) hereof shall be reported to the Control Officer on forms supplied by the Olympic Region Clean Air Agency. Such reports shall be filed at such times as the Control Officer shall direct.))~~ When requested by the Agency, the information pursuant to Rule 8.11(a) must be reported on forms supplied by the Agency.

AMENDATORY SECTION

Rule 8.12.1 Definitions

Unless a different meaning is clearly required by context, the following words and phrases, as used in this Rule, ~~((shall))~~ will have the following meanings:

"CARB" means California Air Resources Board.

"CARB Certified" means a vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order.

"CARB Executive Order" means a document issued by the Executive Officer of the California Air Resources Board that specified the requirements for specific vapor control equipment and the procedures used in installing, maintaining, inspecting, or testing vapor recovery systems.

"Enhanced Vapor Recovery (EVR)" means performance standards and specifications set forth in the CARB CP 201 (Certification Procedure for Vapor Recovery Systems at gasoline dispensing facilities) Sections 3 through 9.

"Gasoline" means a petroleum distillate, which is a liquid at standard conditions and has a true vapor pressure greater than four pounds per square inch absolute at 20°C and is used as a fuel for internal combustion engines. Any liquid sold as a vehicle fuel with a true vapor pressure greater than four pounds per square inch absolute at 20°C is considered 'gasoline' ~~((for purpose of))~~ in this regulation.

"Gasoline Dispensing Facility" means any site dispensing gasoline from stationary storage tanks including facilities dispensing gasoline for automotive, aviation, and marine uses.

"Stage I" means gasoline vapor recovery during all gasoline marketing transfer operations except motor vehicle refueling.

"Stage II" means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.

"Submerged Fill Line" means any discharge pipe or nozzle designed to be within six (6) inches of the bottom of the tank and submerged at all times.

"Throughput" means the amount of gasoline passing through a facility.

~~((Transport Tank means a container used for shipping gasoline over roadways.))~~

"Vapor Recovery System" means equipment that reduces the emissions of volatile organic compounds to the ambient air.

AMENDATORY SECTION

Rule 8.12.2 General Requirements

(a) All gasoline dispensing facilities with gasoline storage tanks, regardless of size ~~((shall))~~ must:

(1) Not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

- (i) Minimize gasoline spills;
- (ii) Clean up spills as soon as practicable;
- (iii) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; and
- (iv) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(b) Gasoline storage tanks with a capacity of 2,000 gallons or more ~~((shall))~~ must be equipped with submerged fill lines.

(c) Gasoline dispensing facilities may be subject to registration per Rule 4.1.

(d) Gasoline dispensing facilities may be subject to Notice of Construction requirements per Rule 6.1.

AMENDATORY SECTION

Rule 8.12.4 Testing Requirements

(a) The owner or operator of a gasoline dispensing facility with a cumulative storage capacity of 10,000 gallons or more and equipped with Stage I EVR must conduct the following performance tests:

(1) Initial performance testing ~~((shall))~~ must be completed, for all performance tests listed in Table 1, after initial installation and prior to the facility dispensing fuel commercially; and,

(2) Subsequent testing ~~((shall))~~ must be conducted according to the schedule in Table 1.

(b) The owner or operator of a gasoline dispensing facility with a cumulative gasoline storage capacity of 10,000 gallons or more that is equipped with Stage I, but not equipped with Stage I EVR, ~~((shall))~~ must conduct the appropriate Static Pressure Performance of Vapor Recovery Systems test in Table 1 at least once every 13 months.

(c) Tests ~~((shall))~~ must be conducted in accordance with the CARB test procedure specified, or CARB-approved equivalent test procedures.

(d) Tests ~~((shall))~~ must be performed by a third-party independent testing company trained in the testing methods.

(e) In the event of a failed performance test, the owner or operator ~~((shall))~~ must correct the cause of the failure in accordance with Rule 8.12.5(c) and retest within 30 days of the date of the failed test.

(f) The owner or operator ~~((shall))~~ must report to the Agency the results of all required performance testing within 30 days of the test date.

Table 1: Performance Testing

A	An owner/operator of a facility with underground storage tanks ((shall)) <u>must</u> conduct the following tests...	After the initial testing, the owner/operator ((shall)) <u>must</u> conduct the subsequent tests...
	A1. TP-201.3 - Static Pressure Performance of Vapor Recovery Systems	at least once every 13 months
	A2. TP-201.1E - Leak Rate and Cracking Pressure of P/V Vent Valves	at least once every 37 months
	A3. TP-201.3C - Determination of Vapor Piping Connection to Underground Gasoline Storage Tanks (Tie-Tank Test)	
	A4. TP-201.1B - Static Torque of Rotatable Stage I Adaptors	at least once every 13 months
	A5. TP-201.1C or TP-201.1D ¹ - Leak Rate of Drop Tube/Drain Valve Assembly or Leak Rate of Drop Tube/Overfill Prevention Device	at least once every 13 months
B	An owner/operator with aboveground storage tanks ((shall)) <u>must</u> conduct the following tests...	After the initial testing, the owner/operator ((shall)) <u>must</u> conduct the subsequent tests...
	B1. TP-206.3 or TP-201.3B ² - Static Pressure Performance of Vapor Recovery Systems	at least once every 13 months
	B2. TP-201.1B - Static Torque of Rotatable Stage I Adaptors ³	at least once every 13 months
	B3. TP-201.1E - Leak Rate and Cracking Pressure of P/V Vent Valves	at least once every 37 months

¹ TP-201.1C has no overfill prevention device and TP-201.1D is required for drop tubes with overfill prevention

² TP-206.3 is required for aboveground storage tanks equipped with Stage I EVR

³ TP-201.1B only required for aboveground storage tanks equipped with Rotatable Stage I Adaptors

AMENDATORY SECTION**Rule 8.12.5 Self-Inspection Requirements**

(a) The owner or operator of a gasoline dispensing facility ~~((shall))~~ must complete self-inspections of the vapor recovery system. The inspection must occur at least once a week, or after each gasoline delivery, whichever is less frequent. At a minimum, the following items ~~((shall))~~ must be inspected:

(1) All adaptors ~~((shall))~~ must be equipped with vapor-tight caps;

(2) All fill and vapor recovery wells or boxes ~~((shall))~~ must be free of liquid gasoline;

(3) All gasoline storage tank fill-pipes ~~((shall))~~ must have gasketed seals in good working condition;

(4) All caps ~~((shall))~~ must have gasketed seals in good working condition; and,

(5) Vapor recovery adaptors on the storage tanks ~~((shall))~~ must seal upon disconnect.

(b) The dates and results of the self-inspections ~~((shall))~~ must be recorded.

(c) No later than 15 days after discovery, the owner or operator ~~((shall))~~ must take corrective actions to repair, replace, or adjust defective equipment found during any of the following events:

(1) Performance tests;

(2) Routine maintenance checks;

(3) Self-inspections; or,

(4) Agency compliance inspections.

AMENDATORY SECTION**Rule 8.12.6 Recordkeeping Requirements**

(a) The following records ~~((shall))~~ must be maintained on site for no less than five years from origination, and copies made available to the Agency upon request:

(1) Records of all maintenance and repair activities;

(2) Records of all self-inspections conducted per Rule 8.12.5;

(3) Records of all performance tests required by Rule 8.12.4; and,

(4) Monthly gasoline throughput records.

(b) The following records ~~((shall))~~ must be maintained on site for the life of the gasoline dispensing facility or the associated equipment, whichever is earlier:

(1) Any determinations issued by the Agency per Rule 6.1;

(2) Any GDF Notice of Intent to Operate submitted to the Agency per Rule 6.1 (b)(3).

AMENDATORY SECTION**RULE 8.13 RESERVED ~~((DRY CLEANERS))~~**

Reviser's note: The typographical 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.

AMENDATORY SECTION**RULE 8.14 ADOPTION OF FEDERAL NEW SOURCE PERFORMANCE STANDARDS (NSPS)**

(a) The NSPS in 40 CFR Part 60 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections

listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 60 ~~((shall))~~ means the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 60 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CRF Part 60 are not adopted:

(i) Subpart B - Adoption and Submittal of State Plans for Designated Facilities;

(ii) Subpart C - Emission Guidelines and Compliance Times;

(iii) Subpart Cb - Large Municipal Waste Combustors that are Constructed on or before September 20, 1994 (Emission Guidelines and Compliance Times);

(iv) Subpart Cc - Municipal Solid Waste Landfills (Emission Guidelines and Compliance Times);

(v) Subpart Cd - Sulfuric Acid Production Units (Emission Guidelines and Compliance Times);

(vi) Subpart Ce - Hospital/Medical/Infectious Waste Incinerators (Emission Guidelines and Compliance Times);

(vii) Subpart S - Primary Aluminum Reduction Plants;

(viii) Subpart BB - Kraft Paper Mills;

(ix) Subpart AAA - New Residential Wood Heaters - as it applies to non-Title V sources;

(x) Subpart BBBB - Small Municipal Waste Combustion Units Constructed on or before August 30, 1999 (Emission Guidelines and Compliance Times);

(xi) Subpart DDDD - Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999 (Emission Guidelines and Compliance Times);

(xii) Subpart FFFF - Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction ~~((On))~~ on or b~~((B))~~efore December 9, 2004;

(xiii) Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xiv) Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xv) Subpart MMMM - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units;

(xvi) Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces - as it applies to non-Title V sources;

(xvii) Subpart UUUU - Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units; and,

(xviii) Appendix G - Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43

for the Newton Power Station of Central Illinois Public Service Company.

Reviser's note: The typographical 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.

AMENDATORY SECTION

RULE 8.15 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)

(a) The NESHAP in 40 CFR Part 61 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 61 ((shall)) means the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 61 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CFR Part 61 are not adopted:

(i) Subpart B - Radon from Underground Uranium Mines;

(ii) Subpart H - Radionuclide other than Radon from Dept. of Energy Facilities;

(iii) Subpart I - Radionuclide from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H;

(iv) Subpart K - Radionuclide from Elemental Phosphorus Plants;

(v) Subpart Q - Radon from Dept. of Energy Facilities;

(vi) Subpart R - Radon from Phosphogypsum Stacks;

(vii) Subpart T - Radon from Disposal Uranium Mill Tailings; and,

(viii) Subpart W - Radon from Operating Mill Tailings.

AMENDATORY SECTION

RULE 8.17 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

(a) The NESHAP for Source Categories in 40 CFR Part 63 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 63 ((shall)) means the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 63 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CFR Part 63, as they apply to non-Title V sources, are not adopted:

(i) Subpart M - National Perchloroethylene Emission Standards for Dry Cleaning Facilities;

(ii) Subpart LL - National Emission Standard for Hazardous Air Pollutants for Primary Aluminum Reduction Plants;

(iii) Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production;

(iv) Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines;

(v) Subpart - BBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(vi) Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and,

(vii) Subpart XXXXXX - Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

WSR 21-21-114

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed October 20, 2021, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-089.

Title of Rule and Other Identifying Information: Chapter 16-303 WAC, Seed assessment, fees for seed services and seed certification. The department is proposing the following amendments:

- Increasing fees for certification and testing to ensure the financial stability of the seed inspection program.
- Establishing new testing and certification fees for services not previously identified in the rule.
- Restructuring the fee schedule to clarify and allow for easier interpretation of the fees.
- Creating WAC 16-303-117 Seed program testing categories, to standardize the seed testing categories and associated crop kinds referenced in WAC 16-303-200 and 16-303-210. This change is also being made to clarify inconsistencies in these sections.
- Creating WAC 16-303-350 Seed tagging fees, to capture all of the seed tagging fees in one place.
- Updating the footnote characters in all tables of this chapter to provide clarity.
- Repealing WAC 16-303-317 to clarify the rule language by ensuring that all quarantine inspections are handled in the same manner.

Hearing Location(s): On December 21, 2021, at 9:00 a.m., Microsoft Teams conference line https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_OTU2ZGY1ZDktNzM4Yi00YmE0LWEwZDgtOWEyYjBmNmZlA4N

DZj%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522838c55c7-c187-44ae-8de0-2be684ce5d4a%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=692bf511-52e0-49af-b0a0-d392d93284ec&directDI=true&msLaunch=true&enableMobilePage=true&suppress-Prompt=true; join by phone +1 564-999-2000, Phone Conference ID 243 579 647#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: December 28, 2021.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by December 21, 2021.

Assistance for Persons with Disabilities: Contact Reanna McNamara, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email rmcnamara@agr.wa.gov, by December 14, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department certifies, inspects, samples, tests, and analyzes agricultural, vegetable, or flower seed sold or offered for sale in Washington state.

The department is proposing the following changes:

- Increasing some current testing and certification fees in the following sections in order to build and maintain a six month operative reserve.
 - WAC 16-303-105, 16-303-200, 16-303-210, 16-303-230, 16-303-240 16-303-250, 16-303-300, 16-303-310, and 16-303-320.
- Establishing new service fees that are not listed in the current fee schedule.
 - WAC 16-303-200 added new sample processing and manual sample processing fees for all testing categories to cover the cost of administrative staff time to engage industry for sample check-in.
 - WAC 16-303-210 added the following additional fees in the special seed test category that were not previously identified in rule. This clarifies the testing fees for all of industry.
 - Electrical conductivity test.
 - In dirt samples, field run samples.
 - Manual seed count.
 - Seed coat dehull for tetrazolium (TZ).
 - Species exam or veskof exam.
 - Dickey-John Test.
 - Oven moisture test.
 - Seed mixture purity exam.
 - Additional sodium hydroxide exam, wheat only.
 - Dust like species exam.
 - Broomrape in red clover exam.
 - Noxious weed search in animal feed, bird seed or organic matter.
 - Total kernel weight seed count.
 - Canadian seed grade report.
 - EC norms conversion from Association of Official Seed Analysis (AOSA) report.
 - Potassium iodide test.
 - WAC 16-303-250 established the following new testing and administrative fees for the following services not previously identified in the rule under miscellaneous service fees. This clarifies the testing fees for all of industry.
 - Combined report.
 - Split seed sample for outsourcing.
 - Washington wilderness hay and mulch certificate.
 - Cancellation of seed test.
 - WAC 16-303-300 added fees for certificates of origin, phytosanitary field application, and nematode soil sampling since these are not currently listed in rule and this will clarify field and testing fees for industry.
 - WAC 16-303-310 added the fee for a reissuance of an Organization for Economic Cooperation and Development (OECD) certificate that were not previously identified in the current rule. This will allow the industry to see the fees associated with the services they request.
 - WAC 16-303-315 added quality seed tagging fees for timothy and orchardgrass seed and footnotes to create transparency for services that are currently being provided but are not listed in rule.
 - Added footnote 1/ to identify where to find the per tag cost.
 - Added footnote 2/ to clarify that additional laboratory analysis is necessary to complete the quality tagging request.
 - Added footnote 3/ to identify where industry can find quality seed tagging standards.
 - WAC 16-303-320 added seed certification crop fees for camelina, radish, sunflower, woody plants and forbs, and hybrids to provide clarity on fees for industry for services that have been provided which were not listed in current rule.
 - WAC 16-303-320 added service field inspections that were not previously identified in the current rule. This will allow the industry to see the fees associated with the services they request.
- Restructuring the fee schedule to clarify and allow for easier interpretation of the fees.
 - Creating WAC 16-303-117 to clarify inconsistencies in seed testing categories and associated crop kinds referenced in WAC 16-303-200 and 16-303-210. WAC 16-303-117 was established to identify the category number with the crop kind and list the specific crops to be used as a reference for WAC 16-303-200 and 16-303-210. Removed the additional crops column in WAC 16-303-200 and 16-303-210 for readability and listed in WAC 16-303-117. Previously, in WAC 16-303-200 the crop names were inconsistent and did not match the crop kinds. WAC 16-303-117 restructures all crop kinds to better fit the category by botanical name. The following is a summary of all the updates in these sections.
 - Industrial hemp is renamed as hemp as it is federally identified.

- The category native grasses added species which are used for reclamation purposes.
- Eliminated crop groups A, B, C as wheatgrass, wild rye, and native species were all listed and added confusion to industry.
- Added woody plants and forbs as a new category for better organization of these plant types.
- Identified for clarity the three species which require a 400 seed TZ test according to AOSA rules, previously this was buried in the footnote of the table.
- Added fruit and vegetable crops which are currently seed tested in the lab and were not previously listed in rule.
- Added camelina to the Brassica species category.
- Clarified the bluegrass category to not include native or reclamation species.
- Removed the vegetable swiss chard and spinach from the beets section and listed in the fruit and vegetable category.
- Moved the crop of lupine from the alfalfa and clover section and listed in peas and other large seeded legumes.
- Additional crops in each category were updated.
- WAC 16-303-200 changed the crop groupings to better match botanical name. Removed the additional crops column in WAC 16-303-200 and 16-303-210 for readability and listed in WAC 16-303-117. This will allow the program to charge consistent fees based upon the correct crop grouping. Industry will now be charged an appropriate fee based upon the body of work.
- WAC 16-303-210 reorganized the fees into two separate tables, part A shows the fees that are specific to crop kind, and part B shows the fees applicable to all crop kinds.
- WAC 16-303-240, the program restructured how revenue is generated for field work and will no longer charge the production hundred weight (cwt) at laboratory analysis and therefore, must pass the per tag cost to industry. By restructuring the fees and no longer charging a cwt, the options A and B for tagging of grass or blended certified crops is no longer applicable. The program will now charge an application fee and the cost per tag. This amendment will benefit industry as the fees charged for the field work earlier in the season cover programs costs for the field work. Therefore, industry will not see a high production fee based on cwt at the time of lab analysis, they will now only pay for the lab work itself. This will allow industry to pay for services over the course of the year instead of having to pay a large payment at the end of the year in the form of a production fee by cwt.
- WAC 16-303-250 updated "High priority sample" to "super rush sample" to reflect current industry language.
- WAC 16-303-300 added clarifying information about fees and combined all field inspections into a single fee since the amount of work for wheat is the same as all other crops.
- WAC 16-303-310 restructured the fee table and added footnotes for clarification of services and the removal of cwt production fee. The program will now charge an application fee and the cost per tag. This amendment will benefit industry as the fees charged for the field work earlier in the season cover programs costs for the field work. Therefore, industry will not see a high production fee based on cwt at the time of lab analysis, they will now only pay for the lab work itself. This will allow industry to pay for services over the course of the year instead of having to pay a large payment at the end of the year in the form of a production fee by cwt.
- WAC 16-303-320 updated the current table to reflect services that were not applicable by adding "N/A" instead of leaving that cell blank. This will provide clarity for industry that there is no service provided for that crop and therefore no fee listed.
- WAC 16-303-320 updated the footnotes to reflect the changes made in the table relating to field fees.
 - Removed footnote 1/ and added this language to the top of the table as it is the most important message for industry to acknowledge.
 - Updated footnote 2/ to reflect a seed applicant vs a seed processor to include all business types.
 - Removed footnotes 5/ and 6/ since cwt is no longer applicable and grass option A and B will no longer be offered as a service.
 - Replaced footnote 5/ to state that shipping and handling charges will now be applicable when outsourced laboratory analysis for plant disease is necessary.
 - Removed footnote 11/ on seed lots packaged in less than 25 pound bags since cwt is no longer applicable and grass option A and B will no longer be offered as a service.
 - Replaced footnote 1/ to reflect the new minimum field inspection fee.
 - Replaced footnote 7/ to clarify when a field application is refundable or nonrefundable.
 - Replaced footnote 8/ to identify seed stock classes with the updated fee per application.
 - Replaced footnote 9/ to clarify that additional travel time and mileage may be applicable to late applications.
 - Replaced footnote 10/ to identify the billable rate for corn bin inspections.
- WAC 16-303-320 moved all field inspections from WAC 16-303-317 to this section, specifically annual and rough bluegrass inspections. This will allow industry to see all field inspection fees in one location.
- WAC 16-303-320 production fees by cwt are removed as they are no longer applicable, fees are restructured to bill by acreage at both the seedling

and crop inspections when applicable. The program restructured how revenue is generated for field work and will no longer charge the production hundred weight (cwt) at laboratory analysis and therefore, must pass the per tag cost to industry. Tags will now be requested and purchased separately by quantity at the per tag price. This will allow industry to pay for services over the course of the year instead of having to pay a large payment at the end of the year in the form of a production fee by cwt.

- Creating WAC 16-303-350 confines all of the tagging fees in one place in the rule language which helps to clarify the rule and make it more easily understood. This change also adds a per tag cost for all certified seed classes, crucifer quarantine tag, and including specialty tags. The program previously purchased tags as it was included with the production cwt charge at the time of laboratory analysis. The annual cost of tags to the program is significant and no longer covers the field work and cost of tags as originally designed. The program restructured how revenue is generated for field work and will no longer charge the production hundred weight (cwt) at laboratory analysis and therefore, must pass the per tag cost to industry. Tags will now be requested and purchased separately by quantity at the per tag price. This will allow industry to pay for services over the course of the year instead of having to pay a large payment at the end of the year in the form of a production fee by cwt.
- Updating all footnote characters in each table of the chapter to allow for easier readability. Previously, the footnotes were identified in the tables with a /1, /2, /3, etc. and it was difficult to identify the footnote characters within the tables. The footnotes will now be labeled as *1, *2, *3, etc. so industry can easily identify the footnotes.
- Repealing WAC 16-303-317 to clarify the rule language by ensuring that all quarantine inspections are handled in the same manner. Inspection fees for annual and rough bluegrass were moved to WAC 16-303-320 for clarity since all field inspections are being listed there. No other quarantine inspections have additional fees if a positive finding occurs, therefore this section is now obsolete.

Reasons Supporting Proposal: Currently, the program's financial operating reserve is fully depleted and will continue to deplete into the negative. The proposed fee increase and restructure is needed to allow the program to rebuild and then maintain the recommended six month reserve, as well as maintain the current staffing level. Without rebuilding the financial reserve and covering current costs, the program will need to reduce staffing and services to industry.

Without the proposed amendments, the department will be forced to eliminate the laboratory and maintain only seed certification and the phytosanitary inspections and certificates. The necessary laboratory analysis for final seed certification for purity and viability would be outsourced to a different lab. This would not be in the best interest of industry because the Washington state department of agriculture (WSDA) would be reliant on outside lab knowledge, skills, and abilities without regulatory oversight, as well as turn-

around times. Additionally, the industry is subject to a free market and price increases at will by a private laboratory without industry review or input. Lastly, the current volume of seed samples the WSDA laboratory intakes annually would go elsewhere in the market and create an unknown backlog among other seed testing laboratories. In all cases, the loss of the department seed laboratory is a hindrance to the body of work industry desires.

The program identified a need to add necessary laboratory succession planning in order to cover an increase in workload. In 2017, the average days behind in laboratory rush samples of grain was six days. The performance expectation by industry and by the quarterly performance management system for rush samples is that rush samples are to be started in three or less days during the busy season. The sample volume from 2017 has been over 8,000 samples per year and over 22,000 individual seed tests. Previously, the requests had been under 11,000 samples per year. The industry requested lab tests have more than doubled in the last five years. Looking into the future, the program has four seasoned purity staff whom are eligible for retirement. To maintain the skill level of the laboratory, it is necessary to succession plan now. It is required by AOSA that an analyst has two years of prior experience to test for accreditation. In order for new purity staff to gain adequate experience, we have initiated an in-training program with performance benchmarks to build crop specific skills. The industry benefits from building the skillset of analysts over time to be proficient in all crops and maintain the program legacy knowledge.

From 2013 - 2018, the amount of certified acreage applied for inspection increased by 35,828 and is close to a 40 percent increase. The field locations have dispersed to further remote and rural locations than prior years causing more drive time. The additional drive times make reaching each location multiple times during the active growing season difficult with the prior field staffing level. Starting in 2018, the program had to increase the number of staff because the average overtime hours over the entire season was reaching 250 - 300 hours per person. The risk of burnout and accident rate increases by having tired staff. Lack of staff causes an increase in the number of late inspections. It benefits industry to have adequate field staffing and field inspections completed in time to make harvest decision.

Through analysis, the program has restructured the way revenue will be generated by eliminating the cwt production field fee. The production fee by cwt is currently based upon the assumption that each field inspection will generate one laboratory sample to bill the production fee. This kept the per acre cost down and collected revenue at the end of the season when the sample was billed by weight. The program has not seen a one to one relationship and thus is not collecting all the potential revenue. Therefore, for every field inspection conducted the program is spending more on transportation and salaries than generating in revenue. Industry benefits by having the field work billed and paid for in the earlier part of the year and not having a large production fee due when the lab sample arrives for analysis.

The increase of laboratory fees is designed to support the body of work the lab staff conducts instead of relying on the field production fees to fill the void. The fee increase pro-

posals is designed to cover all the laboratory overhead, staffing, and supplies supported by lab fees. This will no longer make the laboratory expenditure dependent upon the revenue collected by the production fees designed to support field costs. The benefit to industry is having a fully self-sufficient laboratory that is not depend[ent] upon field harvest yields and cwt production charges.

Establishing new service fees that are not included in the current fee schedule will allow customers to know what the testing cost will be prior to submitting the request. This change will also ensure that all customers are being charged the same fee for services.

Addressing the inconsistencies in WAC 16-303-200 and 16-303-210 will provide clarity for program customers regarding purity, germination, and TZ testing fees associated with their specific crop type.

Statutory Authority for Adoption: RCW 15.49.005 and [15.49].310.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Paula Moore, 21 North 1st Avenue, Suite 203, Yakima, WA 98902, 509-249-6950.

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. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Chapter 16-303 WAC

Seed Assessment, Fees for Seed Services and Seed Certification

October 15, 2021

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

History and Overview: WSDA seed program conducts preharvest field inspections and laboratory testing of agricultural, vegetable, and flower seeds grown under the seed certification program. Field inspection services are performed according to the requirements of the national Association of Official Seed Certifying Agencies (AOSCA) and when requested, the international OECD. The program tests seed samples submitted by seed growers and companies to determine compliance with purity and germination standards, and to certify seed for domestic and international marketing. Seed testing services are performed under the auspices of AOSA, International Seed Testing Association (ISTA), and the Canadian Methods and Procedures for Testing Seed. The program operates Washington state's only official seed testing

laboratory and official seed samplers. This is a self-supporting, fee for service program that is fully funded by the fees received from businesses seeking certification and testing services.

In addition to field inspection and seed testing services, the seed program is responsible for overseeing and enforcing seed packaging requirements for seed sold within Washington state. The purpose is to provide uniformity and consistency in the packing of agricultural, vegetable, and flower seeds to facilitate the interstate movement of seed to protect consumers.

Services provided by the program include:

Field	<ul style="list-style-type: none"> • Official seed sampling • Field inspection <ul style="list-style-type: none"> ◦ AOSCA field standards ◦ OECD field standards ◦ Quarantine inspections • Seed conditioning plant permit inspections
Laboratory	<ul style="list-style-type: none"> • Purity • Germination • TZ • Special tests such as phytosanitary lab examinations
Seed Regulatory	<ul style="list-style-type: none"> • Seed labeling permits • Seed dealer permits • Enforcement of Federal Seed Act
Phytosanitary	<ul style="list-style-type: none"> • Phytosanitary field inspection standards • Federal/state phytosanitary certificates

Why the Rule Change is needed: In 2017, the seed program began assessing the need for a possible fee increase. Utilizing the first month of the fiscal year, the monthly program operating expense increased a total of 93.79 percent from 2013 to 2020, in the amount of \$19,214 to \$37,229. The program cannot reduce operating expenses without imperiling its ability to meet its statutory directives and to provide services desired by the industry. The projected budget in 2017 showed the program was solvent and in good standing, but the recommended six month reserve started to deplete in 2019. From 2017 through 2019, the industry placed a higher demand on program services and requests increased over time. The number of lab test requests increased, as well as the requests for field services, such as phytosanitary field inspections and acreage. The program responded by increasing the number of field staff to meet the demand. The added cost of the additional field staff, the in-training staff, along with a rising cost of goods and services, and agency overhead costs finally caught up with the old fee schedule. In March of 2019, the need for the fee increase was identified and outreach to stakeholders to express the need for the program to increase fees began. At that time, the program's projected budget indicated a possible negative fund balance by the end of May 2021.

In 2019, the program began gathering data and developing ideas for how chapter 16-303 WAC might be changed to meet the needs of the program as well as provide more clarity and transparency for industry. The fee schedule that is currently in rule does not allow WSDA to maintain operations since this fee structure has not seen an increase in nearly 13 years. The program attended commodity commission meetings, as well as local and regional seed meetings to express the need for a fee increase. At that time, the program remained solvent and in good standing with a positive balance. The program continued to engage industry at local and regional meetings to explain the rising cost of goods and services, and the need for additional staffing. These costs increased by a total of 64.58 percent from 2013 to 2020 in the amount of \$147,978 to \$243,539. In this same time frame, the number of annual staffing for the program increased, including seasonal staff, from 29.6 to 37.5 FTEs. The additional staffing started in 2018 to meet the needs of industry for laboratory turnaround time, to address the backlog of samples, and field inspections. The program also started a staff in-training project in 2020 to address succession planning for natural staff attrition due to expected staff retirements. The field staffing increased by four through the inspection season to meet the needs of increased acreage and the geographic distance of inspection locations. The succession planning for accredited lab analyst was identified as a need with the aging of current staff. To become an accreditation lab analyst, it requires a staff member to have two years prior experience before allowed to test with the national organizations to become either an AOSA or Society of Commercial Seed Technologists (SCST) analyst. In the meantime, the agency overhead costs increased by 93.79 percent and the reserve dropped below the required six months operating expenses.

WSDA is proposing to restructure the existing fees in this rule to ensure the cost of providing services is recovered. The necessary increase in fees will allow WSDA to maintain program operations. Once a six-month operating balance has been reached, the program will use the revenue to add laboratory, field, and office staff for succession planning and to reduce overtime hours worked by current staff. There have been several new services offered since the last time this rule was amended, and since these services are not listed in the current fee schedule, the fees for these services have been charged based on staff time and other expenses. Establishing fees for these new services would increase transparency for customers using these services.

The department is also proposing to make clerical changes, including adding native species not previously included, and modifying crop groupings to ensure that all crops are listed under the correct groupings. These changes are for clarification only and do not change the effect of the current rule or impose any additional costs on businesses in order to comply with the rule.

Changes for clarification that do not change the effect of the current rule:

WAC 16-303-200

- Name change of industrial hemp to hemp per federal crop name change.
- Moved crops to better fit the classification in additional crop category.

- Identified the native and reclamation grasses in additional crop category.

WAC 16-303-210

- Reorganized into a table format that is more clear for specialty tests of Canadian, ISTA and quarantine tests.
- Identify which crops undesirable grass species test is available.
- Name change of industrial hemp to hemp per federal crop name change.
- Made a section B for services that are applicable to all crops.

WAC 16-303-230

- Filled in the table with services that were left blank but assumed to be the same of the line above.

WAC 16-303-250

- Changed the name of high priority sample to super rush and referenced by staff and industry.

WAC 16-303-515 [16-303-315]

- Added the two other quality exams not previously listed.
- Renamed the section from sod quality with the addition of timothy and orchard grass.

WAC 16-303-317

- Moved the annual and rough bluegrass quarantine inspection rates to the certified field WAC 16-303-320.

WAC 16-303-320

- Name change of industrial hemp to hemp per federal crop name change.
- Moved service inspection from the footnote to the table to clarify the fee structure.
- Added annual and rough bluegrass quarantine inspections as these are only applicable to certified field inspections.
- Added seedling inspection fees to the table as applicable to clarify when charges were previously charged automatically for two (seedling and crop) inspections.

New tag fee (WAC 16-303-330)

- Clarifies the types of tags available for certified seed by listing each crop, type and tag size available.

The following table shows an overview of how the fees are being amended:

Increase	New	No Change	Deleted
<ul style="list-style-type: none"> • Application fee—All crops • Application late fee—Per application • Area inspection • Bioassay variety specific • Cold (vigor) test for wheat • Crop or weed exam standard AOSA working amount (in addition to other tests requested) • Fees for blending-out-of-state origin certified seed-minimum fee • Fees for blending-Washington origin certified seed—Minimum fee • Field staff stand-by time at warehouse • Germination • Hourly charge increase • Hourly rate • ISTA sampling—All other kinds—Minimum fee increase • ISTA Sampling—Peas, beans, small grains or seeds of similar size—Minimum fee increase • Late application fee penalty • Mill check • Minimum tagging fee • Miscellaneous service, in dirt samples, field run samples, cleaning inert • Moisture test (oven) • OECD certificate • OECD grow out test • OECD tagging fee • Paired tests or 400 TZ when required by AOSA (from section 200) • Paper documents: Additional copies—Registered mail • Pest and disease (phyto exam) and/or soil exam including sclerotinia, ergot, smut • Phytosanitary field inspection—All seed (for each required inspection) • Purity w/ noxious 	<ul style="list-style-type: none"> • Application fee—Camelina, sunflower, woody plants and forbs, canola/radish hybrid • Additional sodium hydroxide exam (wheat only) • All Other: Shipping and handling • Ammonia test (required for Fescue certification) • Broomrape (Orobanche minor) in red clover and other species (dry method) • Canadian seed grade report (Canadian test required) • Cancellation of seed test • Canola/radish hybrid • Certificate of origin • Combined report • Corn cold test new • Dust like species exam (dry method) • EC norms Conversion from AOSA report electrical conductivity (EC) new • Fluorescent test (all perennial and annuals) • Germination test in soil • Late application fee penalty—Camelina, radish, sun flower, woody plants and forbs, service inspections except hybrid • Manual sample processing per request • Moisture test/Dickey-John Test • Nematode soil sample • Noxious weed conversion fee • Noxious weed search in animal feed pellets, bird seed or organic matter • OECD reissued certificate • Orchardgrass quality seed analysis • Paper documents: Additional copies—Digital • Per tag fee 	<ul style="list-style-type: none"> • Annual and rough blue-grass quarantine • Cwt fee • Federal phytosanitary certificate • ISTA sampling—All other kinds - cwt fee no change • ISTA sampling—Peas, beans, small grains or seeds of similar size - cwt fee no change • Mileage • OECD assessment • Quarantine inspection of grass seed fields found to be in violation of the quarantine requirements • Revised reports • Standard sampling—All other kinds - cwt fee no change • Standard sampling - Peas, beans, small grains or seeds of similar size - cwt fee no change • State phytosanitary certificate 	<ul style="list-style-type: none"> • Fees for blending seed-out-of-state origin certified seed—Removed cwt charge • Fees for blending seed—Washington origin certified seed—Removed cwt charge • Production fee (includes tagging) • Fees for blending seed-out-of-state origin certified seed—Removed cwt charge • Fees for blending seed—Washington origin certified seed—Removed cwt charge • Production fee (includes tagging)

Increase	New	No Change	Deleted
<ul style="list-style-type: none"> • Quarantine tests on seed • Reinspection fee (other than isolation) • Rules test—Canadian (no grade report) • Rules test-ISTA (no orange certificate) • Rush samples • Samples: Fee for special shipping/packaging for seed samples, plant health samples (live plants) by Federal Express, air parcel or air freight • Seed tag minimum fee—Sod, quality timothy, quality orchardgrass • Seeding [seedling] producing or field inspection • Seedling field acreage inspection fee—Alfalfa, red clover, white clover and trefoil, perennial grasses, rape-seed, canola, and mustard • Sod or quality seed analysis • Standard sampling—All other kinds—Minimum fee increase • Standard sampling—Peas, beans, small grains or seeds of similar size—Minimum fee increase • Super rush samples • TZ • Wheat species exam 	<ul style="list-style-type: none"> • Phytosanitary field application • Potassium iodine/iodide test new • Preliminary germination percent via email • Reinspection fee (other than isolation)—Camelina, corn, radish, sunflower, woody plants and forbs, service inspections except hybrid • Sample processing per request • Seed coat dehull for TZ (Sainfoin/oat) • Seed count, manual • Seed count, mechanical • Seed mixture purity exam • Seed shipped out-of-state (uncleaned)—New flat fee (no longer cwt) • Species or Veskof Exam • Split seed sample for outsourcing • Stress germination exam • TKW 1000 seed count (total kernel weight/1000 seed) • Undesirable grass species test, no other purity requested • Washington wilderness hay and mulch (WWHAM) certification, if done at time of seed certification inspection 		

Probable compliance requirements: The only probable compliance requirement will be paying the updated fees for seed certification and testing. Section 3 provides a detailed overview of what the cost of compliance will look like with the proposed changes. WSDA performed an in-depth analysis to determine the proposed fee structure and that information is also provided in Section 3. No profes-

sional services will be required by businesses in order to comply with the proposed rule amendments.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Estimated Number of Businesses in Washington	*/**Minor Cost Threshold = 1% of Average Annual Payroll	***Minor Cost Threshold = 0.3% of Average Annual Revenue
111110	Soybean Farming	Data Not Available	****\$100.00	****\$100.00
111140	Wheat Farming	675	\$522.88	\$834.97
111191	Oilseed and Grain Combination Farming	24	\$675	****\$100.00
111199	All Other Grain Farming	187	\$462.90	\$1,321.28
111211	Potato Farming	92	\$7,788.72	\$3,509.36

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Estimated Number of Businesses in Washington	***Minor Cost Threshold = 1% of Average Annual Payroll	***Minor Cost Threshold = 0.3% of Average Annual Revenue
111219	Other Vegetable (except Potato) and Melon Farming	312	\$3,531.73	\$8,532.32
111334	Berry (except Strawberry) Farming	218	\$2,891.00	\$6,275.41
111339	Other Non-citrus Fruit Farming	896	\$2,745.17	\$622.21
111421	Nursery and Tree Production	195	\$4,955.96	\$2,712.36
111422	Floriculture Production	64	\$6,901.82	\$411.75
111940	Hay Farming	323	\$1,312.82	\$3,818.83
111998	All Other Miscellaneous Crop Farming	255	\$9,125.33	\$2,834.77
112111	Beef Cattle Ranching and Farming	244	\$847.30	\$365.99
112990	All Other Animal Production	25	\$499.58	\$468.09
115112	Soil Preparation, Planting, and Cultivating	111	\$1,769.02	\$1,769.65
115114	Postharvest Crop Activities (except Cotton Ginning)	121	\$43,667.20	\$16,986.68
115115	Farm Labor Contractors and Crew Leaders	96	\$13,104.71	\$4,835.64
311224	Soybean and Other Oilseed Processing	5	\$28,531.69	\$48,585.04
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	21	\$105,850.18	\$595,506.45
311421	Fruit and Vegetable Canning	42	\$20,550.40	\$62,568.88
311999	All Other Miscellaneous Food Manufacturing	23	\$11,304.51	\$31,257.46
325320	Pesticide and Other Agricultural Chemical Manufacturing	Data Not Available	****\$100.00	\$47,824.19
325412	Pharmaceutical Preparation Manufacturing	84	\$9,153.91	\$51,592.66
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	26	****\$100.00	\$23,409.10
339999	All Other Miscellaneous Manufacturing	107	\$5,711.64	\$10,446.42
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	61	\$17,959.60	\$110,868.68
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	233	\$2,397.26	\$6,938.84
424480	Fresh Fruit and Vegetable Merchant Wholesalers	163	\$15,965.96	\$46,340.76
424510	Grain and Field Bean Merchant Wholesalers	36	\$8,827.12	\$49,430.75
424590	Other Farm Product Raw Material Merchant Wholesalers	25	\$3,684.24	\$6,733.79
424910	Farm Supplies Merchant Wholesalers	242	\$7,647.50	\$37,719.39
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	94	\$4,244.49	\$6,329.91
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	234	\$2,043.58	\$7,116.01

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Estimated Number of Businesses in Washington	***Minor Cost Threshold = 1% of Average Annual Payroll	***Minor Cost Threshold = 0.3% of Average Annual Revenue
425120	Wholesale Trade Agents and Brokers	4,494	\$4,610.21	\$5,670.92
444220	Nursery, Garden Center, and Farm Supply Stores	330	\$3,429.16	\$3,622.59
445230	Fruit and Vegetable Markets	116	\$2,338.66	\$2,105.40
445299	All Other Specialty Food Stores	200	\$3,946.47	\$2,580.20
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	774	\$3,127.96	\$3,615.53
484110	General Freight Trucking, Local	306	\$6,775.14	\$2,041.21
484121	General Freight Trucking: Long Distance; Truckload	806	\$5,599.75	\$3,671.28
488320	Marine Cargo Handling	51	\$48,056.51	\$78,668.59
488510	Freight Transportation Arrangement	515	\$10,427.53	\$18,581.46
493110	General Warehousing and Storage	160	\$35,157.63	\$8,711.98
493130	Farm Product Warehousing and Storage	22	\$4,066.42	\$9,383.12
523130	Commodity Contracts Dealing	14	\$2,889.95	\$37,513.78
541611	Administrative Management and General Management Consulting Services	2,241	\$8,298.46	\$1,874.37
541618	Other Management Consulting Service	82	\$6,273.33	\$5,854.91
541620	Environmental Consulting Services	328	\$6,796.19	\$1,942.49
541690	Other Scientific and Technical Consulting Services	1,268	\$2,753.32	\$2,561.01
541714	Research and Development in Biotechnology (except Nanobiotechnology)	250	\$45,741.36	\$16,554.07
561730	Landscaping Services	3,183	\$2,070.15	\$790.57
561910	Packaging and Labeling Services	25	\$4,274.19	\$5,749.64
611310	Colleges: Universities; and Professional Schools	228	\$115,887.10	\$19,905.17
813410	Civil and Social Organizations	527	\$4,166.62	\$1,260.36

* Data source: 2018 Employment security department.

** Data source: 2019 Quarterly Census of Employment and Wages (Bureau of Labor Statistics).

*** Data source: 2019 Department of revenue.

**** Data not available. Minor cost is defined in RCW 19.85.020 as "cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll." When minor cost data is not available, the department uses a minor cost threshold of \$100.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The proposed revisions to chapter 16-303 WAC do not result in an across-the-board increase for all fees. An in-depth analysis of the fees collected by the different types of operations allowed WSDA to develop a new structure that will better recover costs per service. The result of the restructure is an increase in some fees and a reduction or removal for others.

Table 3.1 shows the proposed new fee schedule as it compares to the current fees. The probable cost of compliance will be dependent on services that each business requests. Table 3.2 provides an overview of how businesses will be impacted based on the proposed fees as compared to the fees they paid in 2019.

In addition, the proposed revisions to this rule are not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. Compliance with the proposed rule will not likely cause businesses to lose sales or revenue. However, it will likely increase overall expenses for each business. In con-

trast, if the program was not able to continue providing the current level of service, or had to shut down completely due to lack of funds, the businesses it serves would likely lose sales due to the inability to have their seeds tested and certified.

While the proposed revision aims to restructure the existing fee structure for seed certification and testing, it does not impose any additional recordkeeping or administrative costs beyond those currently present in the existing rule.

Table 3.1 - WSDA proposed fees compared to current fees.

Service	Current Fee	New Fee
Seed assessment (WAC 16-303-105)	\$0.11	\$0.28
Seed assessment penalty minimum fee (WAC 16-303-105)	\$20	\$28
Germination	\$25-\$123*	\$60-\$146*
Purity w/noxious	\$29-\$84*	\$68-\$153*
TZ	\$45-\$49*	\$101-\$202*
Sample processing per request	N/A	\$8
Sample processing per request—Manual	N/A	\$13
Sod or quality seed analysis	\$45-\$81*	\$126
Undesirable grass species test, no other purity requested (UGS)	\$76	\$114
Paired Test or 400 TZ when required by AOSA	\$90	\$202
Crop or weed exam standard AOSA working amount (in addition to other tests required)	\$24-\$54*	\$76
Quarantine tests on seed	\$20-\$100*	\$86-\$139*
Rules test—Canadian—Purity	\$35-\$78*	\$68-\$153*
Rules test—Canadian—Germ	\$27-\$38*	\$59-\$82*
Rules test—ISTA—Purity	\$33-\$35*	\$68-\$153*
Rules test—ISTA—Germ	\$33	\$59-\$76*
Additional sodium hydroxide exam (wheat only)	\$23	\$47
Ammonia test (required for Fescue certification)	\$33	\$46
Bioassay variety specific	\$54	\$96
Dust like species exam (dry method) including Broomrape (Orobancha minor)	N/A	\$152
Canadian seed grade report (Canadian test required)	N/A	\$45
Cold (vigor) test for wheat with Palouse soil	\$70	\$107
Cold Test without soil	\$70	\$57
Cold Test with soil - specify soil type	\$40/hour	\$65/hour
EC norms conversion from AOSA report	N/A	\$45
Electrical conductivity (EC)	N/A	\$158
Fluorescent test (all perennial and annual ryegrass)	\$29	\$40
Germination test in soil	\$54	\$65/hour
Hourly charge (applies to especially contaminated or extraordinary samples, e.g., sample prep for coated seed; also used for custom work such as sample preparation, special bulk searches)	\$40/hour	\$65/hour
Mill check 1/	N/A	\$65/hour
Miscellaneous service, in dirt samples, field run samples, cleaning inert	\$40/hour	\$65/hour
Moisture test (oven)	\$33	\$65/hour
Moisture test/Dickey-John Test	N/A	\$63
Noxious weed conversion fee	N/A	\$45

Service	Current Fee	New Fee
Noxious weed search in animal feed pellets, bird seed or organic matter	N/A	\$65/hour
Pest and disease (phyto exam) and/or soil exam including sclerotinia, ergot, smut	\$39	\$95
Potassium iodine/iodide test	N/A	\$65/hour
Preliminary germination percent via email	N/A	\$15
Pre-clean quality grain exam	N/A	\$139
Seed coat dehull for TZ (Sanfoin/oat)	N/A	\$65/hour
Seed count, manual	N/A	\$65/hour
Seed count, mechanical	\$10-\$13*	\$24
Seed mixture purity exam, each crop component	N/A	\$76
Species or Veskof Exam	N/A	\$222
Stress germination exam	N/A	\$65/hour
TKW 1000 seed count (total kernel Weight/1000 seed)	N/A	\$56.00
Wheat species exam	\$24	\$65/hour
Standard sampling—Peas, beans, small grains or seeds of similar size	\$0.09/cwt, \$40 minimum	\$0.13/cwt, \$90 minimum
ISTA sampling—Peas, beans, small grains or seeds of similar size	\$0.11/cwt plus \$9 per lot, \$40 minimum plus \$9 per lot	\$0.21/cwt plus \$13 per lot, \$90 minimum
Standard sampling—All other kinds	\$0.20/cwt, \$40 minimum	\$0.28/cwt, \$90.00 minimum
ISTA sampling—All other kinds	\$0.24/cwt plus \$9/lot, \$40 minimum plus \$9/lot	\$0.33/cwt plus \$13/lot, \$90 minimum
Blending seed—Washington origin	\$0.10/cwt	\$17 plus cost of tag
Blending seed—Out-of-state origin	\$0.66/cwt	\$17 plus cost of tag
Rush samples (purity started in 48 hours, including phone report if requested at time sample is submitted)	\$16	\$136
Super rush sample—Purity result completed before the end of the next business day. (Based upon availability with a limit per day, call ahead for availability.)	\$160	\$204
Paper documents: Additional copies—Digital	N/A	\$8
Paper documents: Additional copies—Registered mail	\$6/destination	\$8 plus exact shipping cost
Samples: Fee for special shipping/packaging for seed samples, plant health samples (live plants) by Federal Express, air parcel or air freight	\$5 plus exact shipping	\$20 plus exact shipping
All Other: Shipping and handling	\$5 plus exact shipping	\$8 plus exact shipping cost
Revised report	\$11 minimum (hourly fee when applicable)	\$15 minimum (hourly fee when applicable)
Combined report	N/A	\$15 minimum (hourly fee when applicable)
Drive time and mileage for additional or special requested trips	\$40/hour plus mileage rate established by OFM	Drive time at hourly rate plus mileage - OFM rate
Field staff stand-by time at warehouse	N/A	\$65/hour
Split seed sample for outsourcing	N/A	\$50
Digital photo per photo	N/A	\$11

Service	Current Fee	New Fee
Washington wilderness hay and mulch (WWHAM) certification, if done at time of seed certification inspection	N/A	\$90
Cancellation of seed test	N/A	Proportional to work completed prior to cancellation - hourly rate minimum .25 hour
Hourly rate	\$40/hour	\$65/hour
Federal phytosanitary certificate	\$50	\$70
State phytosanitary certificate	\$45	\$63
Phyto field inspection	\$5.83/acre, per required inspection - \$55 minimum per inspection	\$8/acre, per required inspection - \$90 minimum per inspection
Certificate of origin	N/A	\$55
Resignature	\$1	\$4
Verification	\$1	\$4
Phyto field application	N/A	\$45
Area inspection	\$0.60/acre	\$3.11/acre, per required inspection
Late fee—Per field application	\$50	\$139
Nematode soil sample	N/A	\$33
OECD assessment	Pass through to USDA	Pass through to USDA
OECD certificate	\$17	\$40
OECD reissued certificate	\$3 plus \$6 per destination if applicable	[\$no fee provided] plus shipping cost if applicable
OECD grow out test	\$72	\$100
OECD tagging fee	\$0.55-\$0.91/cwt*	\$17 plus cost of tag
Quality seed tagging—Sod	\$0.25/cwt plus \$13 tagging fee	\$17 plus tag cost
Quality seed tagging—Quality timothy	\$0.25/cwt plus \$13 tagging fee	\$17 plus tag cost
Quality seed tagging—Quality orchardgrass	\$0.25/cwt plus \$13 tagging fee	\$17 plus tag cost
Annual and rough bluegrass quarantine fees	\$215/field inspection	\$215/field found in violation
Application fee—Certification	\$32.50/field	\$45/field
Seedling field inspection fee	\$54/field	\$3.90/acre, per required inspection
Seedling field inspection fee—Annual and rough bluegrass quarantine	N/A	\$87.60/acre plus time and mileage including travel time
Seedling producing or field inspection	\$2/acre	\$3.90/acre per required inspection
Seedling producing or field inspection—Corn	\$55 first acre, \$12 each add'l acre - hybrid \$5.35 each add'l acre	\$76 first acre, \$17 each add'l acre

Service	Current Fee	New Fee
Seedling producing or field inspection—Perennial grasses	\$54/field	\$3.90/acre per required inspection
Seedling producing or field inspection—Rapeseed, canola and mustard	\$2/acre	\$3.90/acre per required inspection - hybrid, \$7/acre per required inspection
Seedling producing or field inspection—Sunflower	N/A	\$3.90/acre per required inspection - hybrid, \$7 per acre per required inspection
Seedling producing or field inspection—Annual and rough bluegrass quarantine	\$63.53/acre	\$87.60/acre plus time and mileage including travel time
Late application fee penalty	\$50	\$139/field
Seed shipped out of state (uncleaned)	\$0.22 per cwt	\$7/document
Seed shipped out of state (uncleaned)—Corn	\$4/document	\$7/document
Seed shipped out of state (uncleaned)—Perennial grasses	[\$]0.34 cwt	\$7/document
Application	\$32.25	\$45
Application per grower/variety—Alfalfa, bean, canola, mustard	\$32.25	\$45
Seedling field inspection—Alfalfa	\$54/field	\$3.90/acre
Seedling field inspection—Annual grass	N/A	NA
Seedling field inspection—Bean	N/A	NA
Seedling field inspection—Corn	N/A	NA
Seedling field inspection—Hemp	N/A	NA
Seedling field inspection—Perennial grass	\$54/field	\$3.90/acre
Seedling field inspection—Canola, mustard	N/A	\$3.90/acre
Seedling field inspection—Turnip, rutabaga, kale	N/A	\$3.90/acre
Seedling field inspection—Camolina	N/A	NA
Seedling field inspection—Radish	N/A	NA
Seedling field inspection—Sunflower	N/A	NA
Seedling field inspection—Woody plants, forbs	N/A	NA
Seedling producing or field inspection fee—Alfalfa	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Annual grass	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Bean	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Corn	\$55 first acre/\$12 ea. additional acre/\$5.35 hybrid acre	\$76 first acre/\$17 ea. additional acre
Seedling producing or field inspection fee—Hemp	\$40/hour, travel time/miles	\$3.90/acre
Seedling producing or field inspection fee—Perennial grass	\$54/field	\$3.90/acre
Seedling producing or field inspection fee—Canola, mustard	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Turnip, rutabaga, kale	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Camolina	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Radish	\$2/acre	\$3.90/acre
Seedling producing or field inspection fee—Sunflower	\$2/acre	\$3.90/acre

Service	Current Fee	New Fee
Seedling producing or field inspection fee—Woody plant, forbs	\$2/acre	\$3.90/acre
Late application penalty fee	\$50	\$139
Late application penalty fee—Canola, mustard	\$50/grower	\$139
Reinspection fee (other than isolation)	\$58	\$65/hour plus drive time and mileage
Reinspection fee (other than isolation)—Hemp	\$40/hour rate plus drive time and mileage	\$65/hour rate plus drive time and mileage
Production fee—Alfalfa	\$0.57/cwt	NA
Production fee—Annual grass	\$0.45/cwt	NA
Production fee—Bean	\$0.57/cwt	NA
Production fee—Corn	\$0.15/cwt	NA
Production fee—Hemp	\$0.15/cwt	NA
Production fee—Perennial grass	Option A \$0.91/cwt; Option B \$1.26/cwt	NA
Production fee—Canola, mustard	\$0.57/cwt	NA
Production fee—Turnip, rutabaga, kale	\$0.57/cwt	NA
Seed shipped out of state—Alfalfa	\$0.22/cwt	\$7/document, plus cost per tag **
Seed shipped out of state—Annual grass	\$0.22/cwt	\$7/document, plus cost per tag **
Seed shipped out of state—Bean	\$0.22/cwt	\$7/document, plus cost per tag **
Seed shipped out of state—Corn	\$4/document	\$7/document, plus cost per tag **
Seed shipped out of state—Hemp	N/A	\$7/document, plus cost per tag **
Seed shipped out of state—Perennial grass	\$0.34/cwt	\$7/document, plus cost per tag **
Seed shipped out of state—Canola, mustard	\$0.22/cwt	\$7/document, plus cost per tag **
Seed shipped out of state—Turnip, rutabaga, kale	\$0.22/cwt	\$7/document, plus cost per tag **
Hybrid inspection (pollen counts)—At time of certification	\$48.50	\$7/document, plus cost per tag **
Hybrid inspection (pollen counts)—Not conducted at time of certification	\$135	\$7/document, plus cost per tag **
Minimum tagging fee	\$13	\$7/document, plus cost per tag **

* A fee range is provided to indicate this service is priced by crop and based upon the amount of labor necessary to complete the task. Crops that naturally take more time are priced accordingly. Those crops that take less evaluation time are priced lower. The lowest and highest fee is listed as a summary for each service. The actual price by crop is listed in the rule language.

** New tagging section lists the per tag price as a pass through cost since WSDA doesn't earn any revenue from the per tag sale.

In 2019, an estimated 187 small businesses and 49 large businesses paid fees to the WSDA seed program. The program analyzed 2019 fees instead of 2020 fees because the applications for acreage by crop and lab samples did not follow historic trend due to COVID-19. Table 3.2 shows the

total fees paid by each business, as well as the estimated cost under the proposed fee increase.

Table 3.2 - Estimated cost for each business that paid fees in 2019.

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
1	Small	444220	\$48.00	\$96.22	\$48.22	100%
2	Small	424510	\$1,403.98	\$4,429.91	\$3,025.93	216%
3	Large	424510	\$9,670.42	\$464.49	-\$9,205.93	-95%
4	Large	425120	\$1,132.67	\$4,456.00	\$3,323.33	293%
5	Small	111191	\$397.48	\$947.69	\$550.21	138%
6	Large	424910	\$3,380.93	\$8,216.45	\$4,835.52	143%
7****	Small*	444220	\$122.65	\$278.09	\$155.44	127%
8	Small	424910	\$121.00	\$202.00	\$81.00	67%
9	Small	111998	\$142.59	\$500.84	\$358.25	251%
10****	Large	424910	\$10,789.41	\$25,326.16	\$14,536.75	135%
11	Small	111998**	\$336.28	\$501.28	\$165.00	49%
12	Large	424910	\$225.62	\$487.05	\$261.43	116%
13	Small	424910	\$98.69	\$219.73	\$121.04	123%
14	Small	111998**	\$20.00	\$28.00	\$8.00	40%
15	Small*	111998**	\$31.13	\$34.13	\$3.00	10%
16	Small	424910	\$876.35	\$1,420.89	\$544.54	62%
17	Small	424910	\$26,672.90	\$48,826.84	\$22,153.94	83%
18	Large	325412	\$24,331.82	\$47,620.61	\$23,288.79	96%
19	Large	424910	\$104,987.02	\$157,751.84	\$52,764.82	50%
20	Small	424590	\$20.00	\$28.00	\$8.00	40%
21	Small	424910	\$9,911.90	\$16,650.42	\$6,738.52	68%
22	Small	111998	\$43,750.27	\$62,252.71	\$18,502.44	42%
23	Small	111998**	\$166.18	\$238.90	\$72.72	44%
24	Small	115114	\$290.00	\$609.00	\$319.00	110%
25	Small	444220	\$30.00	\$38.00	\$8.00	27%
26	Large	111998**	\$432.28	\$992.33	\$560.05	130%
27	Small	111421	\$1,271.44	\$1,687.01	\$415.57	33%
28	Small	115114	\$1,731.00	\$3,505.00	\$1,774.00	102%
29	Small	424910	\$19,243.46	\$34,219.48	\$14,976.02	78%
30	Small	111998**	\$29.40	\$36.40	\$7.00	24%
31	Large	424910	\$191.22	\$750.57	\$559.35	293%
32	Small	424930	\$30.00	\$38.00	\$8.00	27%
33	Large	445299	\$137.56	\$137.56	\$0.00	0%
34	Small	541620	\$165.71	\$383.01	\$217.30	131%
35	Small	115114	\$72,388.40	\$103,160.25	\$30,771.85	43%
36	Small	111998**	\$2,830.33	\$3,944.00	\$1,113.67	39%
37	Small	111998**	\$75.35	\$231.35	\$156.00	207%
38-41*****	Large	424910	\$25,352.93	\$46,604.19	\$21,251.26	84%
42	Small	424990	\$30.00	\$38.00	\$8.00	27%
43	Small	424910	\$40,918.50	\$76,579.10	\$35,660.60	87%

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
44	Small	541611	\$1,455.52	\$2,250.02	\$794.50	55%
45	Small	115115	\$610.05	\$781.93	\$171.88	28%
46	Large	424510	\$5,855.01	\$4,436.58	-\$1,418.43	-24%
47	Small	111334	\$136.25	\$761.17	\$624.92	459%
48-49*****	Large	424510	\$4,847.48	\$12,358.88	\$7,511.40	155%
50	Small	115114	\$149,339.26	\$192,378.88	\$43,039.62	29%
51-52*****	Small	424910	\$5,456.37	\$8,524.47	\$3,068.10	56%
53	Large	493130	\$62.22	\$128.22	\$66.00	106%
54	Small	424510	\$20.00	\$28.00	\$8.00	40%
55	Small	424910	\$80,694.63	\$132,927.64	\$52,233.01	65%
56	Small	444220	\$20.00	\$28.00	\$8.00	40%
57	Small	444220	\$452.63	\$781.76	\$329.13	73%
58	Small*	111940	\$20.00	\$28.00	\$8.00	40%
59	Large	424910	\$6,746.97	\$10,406.99	\$3,660.02	54%
60	Small	111140	\$3,398.25	\$3,229.12	-\$169.13	-5%
61	Small	111339	\$196.55	\$745.52	\$548.97	279%
62	Small	444220	\$196.55	\$24.05	-\$172.50	-88%
63	Small	111998**	\$245.00	\$186.50	-\$58.50	-24%
64	Large	424910	\$40,715.15	\$64,479.30	\$23,764.15	58%
65	Small*	111998**	\$20.00	\$28.00	\$8.00	40%
66	Small	424910	\$548.30	\$581.90	\$33.60	6%
67	Small*	111998**	\$297.00	\$462.00	\$165.00	56%
68	Small	424990	\$24,000.39	\$41,606.33	\$17,605.94	73%
69	Large	424910	\$30.00	\$38.00	\$8.00	27%
70	Small	111219	\$27.00	\$60.00	\$33.00	122%
71	Small	444220	\$37.66	\$207.02	\$169.36	450%
72	Small	444220	\$132.00	\$236.00	\$104.00	79%
73	Small	424910	\$1,431.73	\$1,752.23	\$320.50	22%
74	Small	424910	\$8,715.22	\$15,661.80	\$6,946.58	80%
75	Small	424910	\$114.00	\$240.00	\$126.00	111%
76	Small	424910	\$5,819.03	\$14,139.69	\$8,320.66	143%
77	Small	424910	\$68,980.17	\$135,074.63	\$66,094.46	96%
78	Small	111998	\$553.30	\$1,230.94	\$677.64	122%
79	Small	424910	\$16,728.90	\$42,220.90	\$25,492.00	152%
80	Small	424910	\$400.00	\$560.00	\$160.00	40%
81	Small	424910	\$20.00	\$28.00	\$8.00	40%
82	Small	424510	\$20.00	\$28.00	\$8.00	40%
83	Small	424910	\$117.28	\$159.28	\$42.00	36%
84	Small	111219	\$653.75	\$886.10	\$232.35	36%
85	Small	111998	\$185,448.79	\$254,911.33	\$69,462.54	37%
86	Small	111998	\$222.50	\$568.14	\$345.64	155%

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
87	Small	424910	\$401.21	\$956.77	\$555.56	138%
88	Small	111998	\$11.07	\$11.07	\$0.00	0%
89	Large	424910	\$546.76	\$1,229.92	\$683.16	125%
90	Small*	111998**	\$33.00	\$60.00	\$27.00	82%
91	Small	453998	\$50.00	\$66.00	\$16.00	32%
92	Small	111219	\$20.00	\$201.00	\$181.00	905%
93	Small*	424930	\$20.00	\$28.00	\$8.00	40%
94	Large	311411	\$27.00	\$60.00	\$33.00	122%
95	Large	424910	\$133.72	\$136.72	\$3.00	2%
96	Small	424910	\$6,479.30	\$14,290.57	\$7,811.27	121%
97	Small	493130	\$33,020.33	\$78,670.93	\$45,650.60	138%
98	Small	112990	\$6,355.79	\$10,384.69	\$4,028.90	63%
99	Small	424510	\$909.95	\$11,840.34	\$10,930.39	1201%
100	Large	424910	\$19,116.07	\$26,301.00	\$7,184.93	38%
101	Small	424910	\$726.00	\$1,657.00	\$931.00	128%
102	Small	424910	\$1,360.31	\$3,293.49	\$1,933.18	142%
103	Small	339999	\$114.87	\$157.87	\$43.00	37%
104	Small*	111940	\$358.84	\$711.17	\$352.33	98%
105	Small*	111998**	\$2,200.41	\$2,874.34	\$673.93	31%
106	Small	424910	\$388.59	\$926.03	\$537.44	138%
107	Large	541714	\$30.00	\$38.00	\$8.00	27%
108	Small	424510	\$1,106.00	\$2,905.00	\$1,799.00	163%
109	Small	111422	\$20.00	\$28.00	\$8.00	40%
110	Small	424910	\$22.97	\$32.19	\$9.22	40%
111	Small	424910	\$360.22	\$317.12	-\$43.10	-12%
112	Small	424910	\$146.50	\$336.20	\$189.70	129%
113	Small	424480	\$4,959.79	\$13,503.79	\$8,544.00	172%
114	Small*	445230	\$20.00	\$28.00	\$8.00	40%
115	Small	541690	\$15,111.63	\$25,816.60	\$10,704.97	71%
116	Small	111110	\$136.25	\$1,139.50	\$1,003.25	736%
117	Small	111140	-\$6.78	-\$6.78	\$0.00	0%
118	Large	424910	\$649.70	\$1,441.70	\$792.00	122%
119	Small	453998	\$24.90	\$24.90	\$0.00	0%
120	Small	424910	\$21,306.12	\$32,694.19	\$11,388.07	53%
121	Small	484121	\$670.67	\$1,231.03	\$560.36	84%
122	Small	424910	\$60,429.18	\$98,329.24	\$37,900.06	63%
123	Small	561730	\$15.56	\$15.56	\$0.00	0%
124	Large	488510	\$13.64	\$13.64	\$0.00	0%
125	Large	325998	\$247.02	\$581.10	\$334.08	135%
126	Small	424910	\$53.00	\$117.00	\$64.00	121%
127	Small	541714	\$1,374.80	\$2,469.43	\$1,094.63	80%

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
128****	Small*	111998**	\$3.67	\$3.67	\$0.00	0%
129	Small	523130	\$296.42	\$694.42	\$398.00	134%
130	Small	424910	\$2,206.15	\$5,354.26	\$3,148.11	143%
131	Small	111998**	\$1,811.94	\$2,836.52	\$1,024.58	57%
132	Small	111998**	\$39,213.52	\$39,652.55	\$439.03	1%
133	Small	488320	\$189.00	\$513.00	\$324.00	171%
134	Small	112111	\$136.25	\$1,103.50	\$967.25	710%
135	Small	424930	\$6,157.34	\$5,785.49	-\$371.85	-6%
136	Large	111998	\$10,807.07	\$24,963.62	\$14,156.55	131%
137	Small	424510	\$23,645.24	\$84,136.39	\$60,491.15	256%
138	Small	111998**	\$20.00	\$28.00	\$8.00	40%
139	Small	444220	\$913.65	\$2,191.65	\$1,278.00	140%
140	Small	111219	\$5,734.59	\$4,691.57	-\$1,043.02	-18%
141	Large	111998	\$60.94	\$60.94	\$0.00	0%
142	Large	423920	\$30.00	\$38.00	\$8.00	27%
143	Small	111421	\$20.00	\$28.00	\$8.00	40%
144	Small	424510	\$81.00	\$156.00	\$75.00	93%
145	Small	444220	\$810.63	\$1,600.95	\$790.32	97%
146	Small	111998**	\$211.00	\$532.00	\$321.00	152%
147	Small	111998**	\$418.78	\$789.78	\$371.00	89%
148	Small	111211	\$86.25	\$220.50	\$134.25	156%
149	Small	424990	\$37.00	\$84.00	\$47.00	127%
150	Small	111998**	\$7,074.91	\$8,008.97	\$934.06	13%
151	Large	311411	\$137.33	\$596.33	\$459.00	334%
152	Small	111998**	\$50.00	\$66.00	\$16.00	32%
153	Small	115114	\$127,075.90	\$190,207.39	\$63,131.49	50%
154	Small	111199	\$23,695.26	\$54,038.26	\$30,343.00	128%
155	Small	493130	\$330.00	\$34.00	-\$296.00	-90%
156	Small	444220	\$438.00	\$816.00	\$378.00	86%
157	Small	424910	\$641.85	\$998.07	\$356.22	55%
158	Large	424510	\$20,830.81	\$57,093.81	\$36,263.00	174%
159	Small	111199	\$25.66	\$41.80	\$16.14	63%
160	Small	325320	\$110.00	\$156.00	\$46.00	42%
161-162*****	Large	424910	\$649.83	\$1,237.43	\$587.60	90%
163	Small	444220	\$102.27	\$207.72	\$105.45	103%
164	Small	111998**	\$351.37	\$1,001.37	\$650.00	185%
165	Small	111998**	\$1,285.35	\$2,924.09	\$1,638.74	127%
166	Large	488510	\$9.61	\$9.61	\$0.00	0%
167-169*****	Large	424510	\$22,805.50	\$56,146.71	\$33,341.21	146%
170	Small	561910	\$30.00	\$38.00	\$8.00	27%
171	Small	311999	\$174.51	\$380.51	\$206.00	118%

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
172	Large	339999	\$172.00	\$374.00	\$202.00	117%
173	Small	424910	\$533.00	\$988.00	\$455.00	85%
174	Large	424910	\$2,757.56	\$6,697.69	\$3,940.13	143%
175	Small	111998**	\$108.49	\$281.49	\$173.00	159%
176-178*****	Large	424990	\$110,671.34	\$238,529.94	\$127,858.60	116%
179	Small	541618	\$59,508.85	\$111,913.10	\$52,404.25	88%
180	Small	111219	\$3,502.05	\$6,957.26	\$3,455.21	99%
181	Small	493110	\$63.00	\$171.00	\$108.00	171%
182	Small	111998**	\$4,218.38	\$8,783.88	\$4,565.50	108%
183	Small	111219	\$64,740.09	\$101,855.21	\$37,115.12	57%
184	Large	424910	\$4,864.88	\$7,452.42	\$2,587.54	53%
185	Small	111998**	\$338.00	\$618.50	\$280.50	83%
186	Small	424590	\$29,786.50	\$46,927.88	\$17,141.38	58%
187	Small	111998	\$2,037.84	\$4,563.84	\$2,526.00	124%
188	Small	111998**	\$7,451.03	\$6,517.67	-\$933.36	-13%
189	Small*	111998	\$20.00	\$28.00	\$8.00	40%
190	Small	424910	\$196.55	\$420.55	\$224.00	114%
191	Small*	111998**	\$22,198.77	\$32,010.11	\$9,811.34	44%
192	Large	424910	\$17,683.19	\$37,837.12	\$20,153.93	114%
193	Small	444220	\$468.56	\$930.56	\$462.00	99%
194	Small	488320	\$7,266.99	\$18,364.99	\$11,098.00	153%
195***	Small*	111998**	\$20.00	\$28.00	\$8.00	40%
196	Small*	453998	\$20.00	\$28.00	\$8.00	40%
197	Small	111998**	\$6,667.44	\$8,104.10	\$1,436.66	22%
198	Small	444220	\$417.31	\$1,264.20	\$846.89	203%
199	Small	444220	\$38,297.54	\$81,421.87	\$43,124.33	113%
200	Large	424910	\$501.18	\$1,122.28	\$621.10	124%
201-202*****	Large	424910	\$37,836.18	\$70,270.92	\$32,434.74	86%
203	Large	311421	\$5,302.16	\$9,740.04	\$4,437.88	84%
204	Small	111998**	\$116.00	\$256.00	\$140.00	121%
205	Small	111998**	\$194.92	\$877.42	\$682.50	350%
206	Large	424910	\$227,424.68	\$277,826.69	\$50,402.01	22%
207	Large	424910	\$337.00	\$747.00	\$410.00	122%
208	Small	111219	\$1,886.42	\$3,632.15	\$1,745.73	93%
209	Large	111998	\$1,256.05	\$4,027.99	\$2,771.94	221%
210	Small	111998**	\$314.00	\$364.00	\$50.00	16%
211	Small*	111998**	\$20.00	\$28.00	\$8.00	40%
212	Small	424910	\$653.35	\$1,342.90	\$689.55	106%
213	Small	311999	\$5,395.41	\$12,842.92	\$7,447.51	138%
214	Small	424910	\$231.89	\$491.49	\$259.60	112%
215	Small	424510	\$1,582.46	\$4,516.46	\$2,934.00	185%

Business	Business Size	NAICS Code	Total Cost 2019 ***	Total Cost w/ Proposed Increase ***	Cost Difference Between 2019 and Proposed Increase ***	Percent Change in Cost
216	Small	424910	\$33.00	\$60.00	\$27.00	82%
217	Small	424590	\$1,653.94	\$2,853.86	\$1,199.92	73%
218	Small	424910	\$22.68	\$34.54	\$11.86	52%
219	Small	424590	\$1,106.78	\$4,620.58	\$3,513.80	317%
220	Small	111998**	\$285.75	\$301.70	\$15.95	6%
221	Small	424910	\$20.00	\$28.00	\$8.00	40%
222-226*****	Large	424910	\$213,189.70	\$369,145.88	\$155,956.18	73%
227	Small	484110	\$1,006.34	\$2,550.34	\$1,544.00	153%
228	Small	444220	\$20.00	\$28.00	\$8.00	40%
229	Small	423990	\$50.00	\$66.00	\$16.00	32%
230	Large	813410	\$225.00	\$505.00	\$280.00	124%
231	Small	424480	\$1,029.26	\$1,797.81	\$768.55	75%
232	Small*	111998**	\$584.00	\$1,282.00	\$698.00	120%
233	Small	311224	\$2,278.57	\$4,790.79	\$2,512.22	110%
234	Large	424510	\$998.04	\$1,837.04	\$839.00	84%
235	Small	424590	\$1,124.00	\$2,803.00	\$1,679.00	149%
236	Large	424990	\$361.30	\$706.80	\$345.50	96%
237	Small	115114	\$14,261.13	\$36,571.46	\$22,310.33	156%
238	Small	424910	\$437.00	\$1,224.00	\$787.00	180%
239	Small	444220	\$66.20	\$140.56	\$74.36	112%
240	Small	424510	\$2,375.36	\$5,633.26	\$3,257.90	137%
241	Small	115112	\$1,742.24	\$3,436.00	\$1,693.76	97%
242	Large	611310	\$723.00	\$1,431.00	\$708.00	98%
243	Small	111998	\$883.33	\$1,577.23	\$693.90	79%
244	Small	111940	\$380.17	\$2,126.78	\$1,746.61	459%
245	Small	115114	\$1,766.41	\$3,029.84	\$1,263.43	72%
246	Small	424910	\$176.68	\$221.68	\$45.00	25%
247	Small	424910	\$860.99	\$1,662.99	\$802.00	93%
248	Small	112990	\$1,829.00	\$4,164.00	\$2,335.00	128%
249****	Small*	111998	\$76.00	\$292.00	\$216.00	284%
250	Small	424910	\$378.00	\$937.00	\$559.00	148%
251	Small	424510	\$17,179.42	\$31,723.23	\$14,543.81	85%
252	Small	424910	\$20.00	\$28.00	\$8.00	40%
253	Small	424510	\$630.58	\$1,514.15	\$883.57	140%
254	Large	424910	\$69.82	\$142.82	\$73.00	105%
255	Small	111219	\$3,780.49	\$5,068.11	\$1,287.62	34%
256	Large	424910	\$4,259.33	\$7,200.51	\$2,941.18	69%

* Data on number of employees was unavailable, so calculated as one staff employed.

** NAICS code not found, assigned 111998 (the classification for all other miscellaneous crop farming).

*** Calculated using fees paid by each business in 2019 compared to projected new fees.

**** No information found, or business has closed. Removed from analysis.

***** These businesses were billed as separate locations, but had a single "headquarters" location. All locations were combined into one for the analysis and a range was used for the business number.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.

Total fees paid by each business in 2019 were compared with estimated costs under the proposed fee increase and the

minor cost thresholds identified in Section 2. Businesses expected to experience an increase that exceeds the minor cost threshold for their industry are shown in Table 4.1. Businesses that are not expected to experience more-than-minor costs for their industry are shown in Table 4.2.

Table 4.1 - Businesses with estimated cost increases expected to *exceed* the minor cost threshold.

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
22	Small	111998	\$18,502.44	\$9,125.33
55	Small	424910	\$52,233.01	\$37,719.39
68	Small	424990	\$17,605.94	\$7,116.01
77	Small	424910	\$66,094.46	\$37,719.39
85	Small	111998	\$69,462.54	\$9,125.33
97	Small	493130	\$45,650.60	\$9,383.12
98	Small	112990	\$4,028.90	\$499.58
115	Small	541690	\$10,704.97	\$2,753.32
116	Small	111110	\$1,003.25	\$100.00
122	Small	424910	\$37,900.06	\$37,719.39
134	Small	112111	\$967.25	\$847.30
137	Small	424510	\$60,491.15	\$49,430.75
153	Small	115114	\$63,131.49	\$43,667.20
154	Small	111199	\$30,343.00	\$1,321.28
179	Small	541618	\$52,404.25	\$6,273.33
183	Small	111219	\$37,115.12	\$8,532.32
186	Small	424590	\$17,141.38	\$6,733.79
191	Small*	111998**	\$9,811.34	\$9,125.33
199	Small	444220	\$43,124.33	\$3,622.59
248	Small	112990	\$2,335.00	\$499.58
19	Large	424910	\$52,764.82	\$37,719.39
38-41*****	Large	424910	\$46,604.19	\$37,719.39
136	Large	111998	\$14,156.55	\$9,125.33
176-178*****	Large	424910	\$127,858.60	\$37,719.39
206	Large	424910	\$50,402.01	\$37,719.39
222-226*****	Large	424910	\$155,956.18	\$37,719.39

* Data on number of employees was unavailable, so calculated as one staff employed.

** NAICS code not found, assigned 111998 (the classification for all other miscellaneous crop farming).

*** Calculated using fees paid by each business in 2019 compared to projected new fees.

**** Determined based on highest amount between one percent of average annual payroll and 0.3 percent of average annual revenue for each NAICS code. Data from the Washington state employment security department and the Washington state department of revenue.

***** These businesses were billed as separate locations, but had a single "headquarters" location. All locations were combined into one for the analysis and a range was used for the business number.

Table 4.1 indicates that of the 236 businesses which paid fees in 2019, 25 are expected to have costs exceeding the

minor cost threshold. Nineteen of these businesses are considered to be small and six are considered to be large.

However, not all businesses that paid fees in 2019 are expected to have costs exceeding the minor cost threshold. Table 4.2 shows that 211 businesses are expected to have cost

increases **less** than the minor cost threshold. 168 of these businesses are considered small and 43 are considered to be large.

Table 4.2 - Businesses with estimated cost increases expected to be *less than* the minor cost threshold.

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
1	Small	444220	\$48.22	\$3,622.59
2	Small	424510	\$3,025.93	\$49,430.75
5	Small	111191	\$550.21	\$675.00
8	Small	424910	\$81.00	\$37,719.39
9	Small	111998	\$358.25	\$9,125.33
11	Small	111998**	\$165.00	\$9,125.33
13	Small	424910	\$121.04	\$37,719.39
14	Small	111998**	\$8.00	\$9,125.33
15	Small*	111998*	\$3.00	\$9,125.33
16	Small	424910	\$544.54	\$37,719.39
17	Small	424910	\$22,153.94	\$37,719.39
20	Small	424590	\$8.00	\$6,733.79
21	Small	424910	\$6,738.52	\$37,719.39
23	Small	111998**	\$72.72	\$9,125.33
24	Small	115114	\$319.00	\$43,667.20
25	Small	444220	\$8.00	\$3,622.59
27	Small	111421	\$415.57	\$4,955.96
28	Small	115114	\$1,774.00	\$43,667.20
29	Small	424910	\$14,976.02	\$37,719.39
30	Small	111998**	\$7.00	\$9,125.33
32	Small	424930	\$8.00	\$6,329.91
34	Small	541620	\$217.30	\$6,796.19
35	Small	115114	\$30,771.85	\$43,667.20
36	Small	111998**	\$1,113.67	\$9,125.33
37	Small	111998**	\$156.00	\$9,125.33
42	Small	424990	\$8.00	\$7,116.01
43	Small	424910	\$35,660.60	\$37,719.39
44	Small	541611	\$794.50	\$8,298.46
45	Small	115115	\$171.88	\$13,104.71
47	Small	111334	\$624.92	\$6,275.41
50	Small	115114	\$43,039.62	\$43,667.20
51-52*****	Small	424910	\$3,068.10	\$37,719.39
54	Small	424510	\$8.00	\$49,430.75
56	Small	444220	\$8.00	\$3,622.59
57	Small	444220	\$329.13	\$3,622.59
58	Small	111940	\$8.00	\$3,818.83
60	Small	111140	-\$169.13	\$834.97
61	Small	111339	\$548.97	\$2,745.17
62	Small	444220	-\$172.50	\$3,622.59

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
63	Small	111998**	-\$58.50	\$9,125.33
65	Small*	111998**	\$8.00	\$9,125.33
66	Small	424910	\$33.60	\$37,719.39
67	Small*	111998**	\$165.00	\$9,125.33
70	Small	111219	\$33.00	\$8,532.32
71	Small	444220	\$169.36	\$3,622.59
72	Small	444220	\$104.00	\$3,622.59
73	Small	424910	\$320.50	\$37,719.39
74	Small	424910	\$6,946.58	\$37,719.39
75	Small	424910	\$126.00	\$37,719.39
76	Small	424910	\$8,320.66	\$37,719.39
78	Small	111998	\$677.64	\$9,125.33
79	Small	424910	\$25,492.00	\$37,719.39
80	Small	424910	\$160.00	\$37,719.39
81	Small	424910	\$8.00	\$37,719.39
82	Small	424510	\$8.00	\$49,430.75
83	Small	424910	\$42.00	\$37,719.39
84	Small	111219	\$232.35	\$8,532.32
86	Small	111998	\$345.64	\$9,125.33
87	Small	424910	\$555.56	\$37,719.39
88	Small	111998	\$0.00	\$9,125.33
90	Small*	111998**	\$27.00	\$9,125.33
91	Small	453998	\$16.00	\$3,615.53
92	Small	111219	\$181.00	\$8,532.32
93	Small*	424930	\$8.00	\$6,329.91
96	Small	424910	\$7,811.27	\$37,719.39
99	Small	424510	\$10,930.39	\$49,430.75
101	Small	424910	\$931.00	\$37,719.39
102	Small	424910	\$1,933.18	\$37,719.39
103	Small	339999	\$43.00	\$10,446.42
104	Small*	111940	\$352.33	\$3,818.83
105	Small	111998**	\$673.93	\$9,125.33
106	Small	424910	\$537.44	\$37,719.39
108	Small	424510	\$1,799.00	\$49,430.75
109	Small	111422	\$8.00	\$6,901.82
110	Small	424910	\$9.22	\$37,719.39
111	Small	424910	-\$43.10	\$37,719.39
112	Small	424910	\$189.70	\$37,719.39
113	Small	424480	\$8,544.00	\$46,340.76
114	Small*	445230	\$8.00	\$2,338.66
117	Small	111140	\$0.00	\$834.97
119	Small	453998	\$0.00	\$3,615.53

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
120	Small	424910	\$11,388.07	\$37,719.39
121	Small	484121	\$560.36	\$5,599.75
123	Small	561730	\$0.00	\$2,070.15
126	Small	424910	\$64.00	\$37,719.39
127	Small	541714	\$1,094.63	\$45,741.36
129	Small	523130	\$398.00	\$37,513.78
130	Small	424910	\$3,148.11	\$37,719.39
131	Small	111998**	\$1,024.58	\$9,125.33
132	Small	111998**	\$439.03	\$9,125.33
133	Small	488320	\$324.00	\$78,668.59
135	Small	424930	-\$371.85	\$6,329.91
138	Small	111998**	\$8.00	\$9,125.33
139	Small	444220	\$1,278.00	\$3,622.59
140	Small	111219	-\$1,043.02	\$8,532.32
143	Small	111421	\$8.00	\$4,955.96
144	Small	424510	\$75.00	\$49,430.75
145	Small	444220	\$790.32	\$3,622.59
146	Small	111998**	\$321.00	\$9,125.33
147	Small	111998**	\$371.00	\$9,125.33
148	Small	111211	\$134.25	\$7,788.72
149	Small	424990	\$47.00	\$7,116.01
150	Small	111998**	\$934.06	\$9,125.33
152	Small	111998**	\$16.00	\$9,125.33
155	Small	493130	-\$296.00	\$9,383.12
156	Small	444220	\$378.00	\$3,622.59
157	Small	424910	\$356.22	\$37,719.39
159	Small	111199	\$16.14	\$1,321.28
160	Small	325320	\$46.00	\$47,824.19
163	Small	444220	\$105.45	\$3,622.59
164	Small	111998**	\$650.00	\$9,125.33
165	Small	111998**	\$1,638.74	\$9,125.33
170	Small	561910	\$8.00	\$5,749.64
171	Small	311999	\$206.00	\$31,257.46
173	Small	424910	\$455.00	\$37,719.39
175	Small	111998**	\$173.00	\$9,125.33
180	Small	111219	\$3,455.21	\$8,532.32
181	Small	493110	\$108.00	\$35,157.63
182	Small	111998**	\$4,565.50	\$9,125.33
185	Small	111998**	\$280.50	\$9,125.33
187	Small	111998	\$2,526.00	\$9,125.33
188	Small	111998**	-\$933.36	\$9,125.33
189	Small*	111998**	\$8.00	\$9,125.33

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
190	Small	424910	\$224.00	\$37,719.39
193	Small	444220	\$462.00	\$3,622.59
194	Small	488320	\$11,098.00	\$78,668.59
196	Small*	453998	\$8.00	\$3,615.53
197	Small	111998**	\$1,436.66	\$9,125.33
198	Small	444220	\$846.89	\$3,622.59
208	Small	111219	\$1,745.73	\$8,532.32
204	Small	111998**	\$140.00	\$9,125.33
205	Small	111998**	\$682.50	\$9,125.33
210	Small	111998**	\$50.00	\$9,125.33
211	Small*	111998**	\$8.00	\$9,125.33
212	Small	424910	\$689.55	\$37,719.39
213	Small	311999	\$7,447.51	\$31,257.46
214	Small	424910	\$259.60	\$37,719.39
215	Small	424510	\$2,934.00	\$49,430.75
216	Small	424910	\$27.00	\$37,719.39
217	Small	424590	\$1,199.92	\$6,733.79
218	Small	424910	\$11.86	\$37,719.39
219	Small	424590	\$3,513.80	\$6,733.79
220	Small	111998**	\$15.95	\$9,125.33
221	Small	424910	\$8.00	\$37,719.39
227	Small	484110	\$1,544.00	\$6,775.14
228	Small	444220	\$8.00	\$3,622.59
229	Small	423990	\$16.00	\$6,938.84
231	Small	424480	\$768.55	\$46,340.76
232	Small*	111998**	\$698.00	\$9,125.33
233	Small	311224	\$2,512.22	\$48,585.04
235	Small	424590	\$1,679.00	\$6,733.79
237	Small	115114	\$22,310.33	\$43,667.20
238	Small	424910	\$787.00	\$37,719.39
239	Small	444220	\$74.36	\$3,622.59
240	Small	424510	\$3,257.90	\$49,430.75
241	Small	115112	\$1,693.76	\$1,769.65
243	Small	111998	\$693.90	\$9,125.33
244	Small	111940	\$1,746.61	\$3,818.83
245	Small	115114	\$1,263.43	\$43,667.20
246	Small	424910	\$45.00	\$37,719.39
247	Small	424910	\$802.00	\$37,719.39
250	Small	424910	\$559.00	\$37,719.39
251	Small	424510	\$14,543.81	\$49,430.75
252	Small	424910	\$8.00	\$37,719.39
253	Small	424510	\$883.57	\$49,430.75

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
255	Small	111219	\$1,287.62	\$8,532.32
3	Large	424510	-\$9,205.93	\$49,430.75
4	Large	425120	\$3,323.33	\$5,670.92
6	Large	424910	\$4,835.52	\$37,719.39
12	Large	424910	\$261.43	\$37,719.39
18	Large	325412	\$23,288.79	\$51,592.66
26	Large	111998**	\$560.05	\$9,125.33
31	Large	424910	\$559.35	\$37,719.39
33	Large	445299	\$0.00	\$3,946.47
46	Large	424510	-\$1,418.43	\$49,430.75
48-49*****	Large	424510	\$7,511.40	\$49,430.75
53	Large	493130	\$66.00	\$9,383.12
59	Large	424910	\$3,660.02	\$37,719.39
64	Large	424910	\$23,764.15	\$37,719.39
69	Large	424910	\$8.00	\$37,719.39
89	Large	424910	\$683.16	\$37,719.39
94	Large	311411	\$33.00	\$595,506.45
95	Large	424910	\$3.00	\$37,719.39
100	Large	424910	\$7,184.93	\$37,719.39
107	Large	541714	\$8.00	\$45,741.36
118	Large	424910	\$792.00	\$37,719.39
124	Large	488510	\$0.00	\$18,581.46
125	Large	325998	\$334.08	\$23,409.10
141	Large	111998	\$0.00	\$9,125.33
142	Large	423920	\$8.00	\$110,868.68
151	Large	311411	\$459.00	\$595,506.45
158	Large	424510	\$36,263.00	\$49,430.75
161-162*****	Large	424910	\$587.60	\$37,719.39
166	Large	488510	\$0.00	\$18,581.46
167-169*****	Large	424510	\$33,341.21	\$49,430.75
172	Large	339999	\$202.00	\$10,446.42
174	Large	424910	\$3,940.13	\$37,719.39
184	Large	424910	\$2,587.54	\$37,719.39
192	Large	424910	\$20,153.93	\$37,719.39
200	Large	424910	\$621.10	\$37,719.39
201-202*****	Large	424910	\$32,434.74	\$37,719.39
203	Large	311421	\$4,437.88	\$62,568.88
207	Large	424910	\$410.00	\$37,719.39
209	Large	111998	\$2,771.94	\$9,125.33
230	Large	813410	\$280.00	\$4,166.62
234	Large	424510	\$839.00	\$49,430.75
236	Large	424990	\$345.50	\$7,116.01

Business	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
242	Large	611310	\$708.00	\$115,887.10
254	Large	424910	\$73.00	\$37,719.39
256	Large	424910	\$2,941.18	\$37,719.39

- * Data on number of employees was unavailable, so calculated as one staff employed.
- ** NAICS code not found, assigned 111998 (the classification for all other miscellaneous crop farming).
- *** Calculated using fees paid by each business in 2019 compared to projected new fees.
- **** Determined based on highest amount between one percent of average annual payroll and 0.3 percent of average annual revenue for each NAICS code. Data from the Washington state employment security department and the Washington state department of revenue.
- ***** These businesses were billed as separate locations, but had a single "headquarters" location. All locations were combined into one for the analysis and a range was used for the business number.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires the department [to] compare the cost of compliance for small businesses with the cost of compliance for the largest 10 percent of businesses required to comply with the proposed rule amendment. One or more of

the following methods can be used as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per \$100.00 of sales.

Costs per employee were analyzed for the top 10 percent of large businesses impacted by the proposed changes. This was compared with the cost per employee for all impacted small businesses. Table 5.1 shows the results of the analysis, which indicates that small businesses will be disproportionately impacted by the proposed amendments.

Table 5.1 - Comparison of estimated costs per employee for the top 10 percent of large businesses and all small businesses impacted by the proposed amendments.

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
1	Small	444220	6	\$48.22	\$8.04
2	Small	424510	2	\$3,025.93	\$1,512.97
5	Small	111191	22	\$550.21	\$25.01
8	Small	424910	11	\$81.00	\$7.36
9	Small	111998	2	\$358.25	\$179.13
11	Small	111998**	37	\$165.00	\$4.46
13	Small	424910	12	\$121.04	\$10.09
14	Small	111998**	2	\$8.00	\$4.00
15	Small*	111998*	1	\$3.00	\$3.00
16	Small	424910	10	\$544.54	\$54.45
17	Small	424910	42	\$22,153.94	\$527.47
20	Small	424590	5	\$8.00	\$1.60
21	Small	424910	20	\$6,738.52	\$336.93
22	Small	111998	6	\$18,502.44	\$3,083.74
23	Small	111998**	8	\$72.72	\$9.09
24	Small	115114	6	\$319.00	\$53.17
25	Small	444220	13	\$8.00	\$0.62
27	Small	111421	****2.5	\$415.57	\$166.23
28	Small	115114	****35	\$1,774.00	\$50.69
29	Small	424910	23	\$14,976.02	\$651.13
30	Small	111998**	10	\$7.00	\$0.70

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
32	Small	424930	25	\$8.00	\$0.32
34	Small	541620	23	\$217.30	\$9.45
35	Small	115114	22	\$30,771.85	\$1,398.72
36	Small	111998**	20	\$1,113.67	\$55.68
37	Small	111998**	4	\$156.00	\$39.00
42	Small	424990	35	\$8.00	\$0.23
43	Small	424910	7	\$35,660.60	\$5,094.37
44	Small	541611	3	\$794.50	\$264.83
45	Small	115115	4	\$171.88	\$42.97
47	Small	111334	7	\$624.92	\$89.27
50	Small	115114	2	\$43,039.62	\$21,519.81
51-52*****	Small	424910	4	\$3,068.10	\$767.03
54	Small	424510	4	\$8.00	\$2.00
55	Small	424910	20	\$52,233.01	\$2,611.65
56	Small	444220	4	\$8.00	\$2.00
57	Small	444220	2	\$329.13	\$164.57
58	Small	111940	1	\$8.00	\$8.00
60	Small	111140	1	-\$169.13	-\$169.13
61	Small	111339	5	\$548.97	\$109.79
62	Small	444220	5	-\$172.50	-\$34.50
63	Small	111998**	2	-\$58.50	-\$29.25
65	Small*	111998**	1	\$8.00	\$8.00
66	Small	424910	4	\$33.60	\$8.40
67	Small*	111998**	1	\$165.00	\$165.00
68	Small	424990	18	\$17,605.94	\$978.11
70	Small	111219	4	\$33.00	\$8.25
71	Small	444220	3	\$169.36	\$56.45
72	Small	444220	1	\$104.00	\$104.00
73	Small	424910	4	\$320.50	\$80.13
74	Small	424910	7	\$6,946.58	\$992.37
75	Small	424910	4	\$126.00	\$31.50
76	Small	424910	5	\$8,320.66	\$1,664.13
77	Small	424910	12	\$66,094.46	\$5,507.87
78	Small	111998	1	\$677.64	\$677.64
79	Small	424910	7	\$25,492.00	\$3,641.71
80	Small	424910	50	\$160.00	\$3.20
81	Small	424910	21	\$8.00	\$0.38
82	Small	424510	3	\$8.00	\$2.67
83	Small	424910	2	\$42.00	\$21.00
84	Small	111219	35	\$232.35	\$6.64
85	Small	111998	2	\$69,462.54	\$34,731.27

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
86	Small	111998	1	\$345.64	\$345.65
87	Small	424910	45	\$555.56	\$12.35
88	Small	111998	1	\$0.00	\$0.00
90	Small*	111998**	1	\$27.00	\$27.00
91	Small	453998	2	\$16.00	\$8.00
92	Small	111219	18	\$181.00	\$10.06
93	Small*	424930	1	\$8.00	\$8.00
96	Small	424910	3	\$7,811.27	\$2,603.76
97	Small	493130	14	\$45,650.60	\$3,260.76
98	Small	112990	****2.5	\$4,028.90	\$1,611.56
99	Small	424510	50	\$10,930.39	\$218.61
101	Small	424910	2	\$931.00	\$465.50
102	Small	424910	17	\$1,933.18	\$113.72
103	Small	339999	1	\$43.00	\$43.00
104	Small*	111940	1	\$352.33	\$352.33
105	Small	111998**	30	\$673.93	\$22.46
106	Small	424910	25	\$537.44	\$21.50
108	Small	424510	10	\$1,799.00	\$179.90
109	Small	111422	1	\$8.00	\$8.00
110	Small	424910	1	\$9.22	\$9.22
111	Small	424910	5	-\$43.10	-\$8.62
112	Small	424910	5	\$189.70	\$37.94
113	Small	424480	2	\$8,544.00	\$4,272.00
114	Small*	445230	1	\$8.00	\$8.00
115	Small	541690	12	\$10,704.97	\$892.08
116	Small	111110	3	\$1,003.25	\$334.42
117	Small	111140	1	\$0.00	\$0.00
119	Small	453998	7	\$0.00	\$0.00
120	Small	424910	5	\$11,388.07	\$2,277.61
121	Small	484121	12	\$560.36	\$46.70
122	Small	424910	9	\$37,900.06	\$4,211.12
123	Small	561730	3	\$0.00	\$0.00
126	Small	424910	3	\$64.00	\$21.33
127	Small	541714	18	\$1,094.63	\$60.81
129	Small	523130	25	\$398.00	\$15.92
130	Small	424910	8	\$3,148.11	\$393.51
131	Small	111998**	2	\$1,024.58	\$512.29
132	Small	111998**	1	\$439.03	\$439.03
133	Small	488320	39	\$324.00	\$8.31
134	Small	112111	10	\$967.25	\$96.00
135	Small	424930	10	-\$371.85	-\$37.19

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
137	Small	424510	8	\$60,491.15	\$7,561.39
138	Small	111998**	1	\$8.00	\$8.00
139	Small	444220	2	\$1,278.00	\$639.00
140	Small	111219	3	-\$1,043.02	-\$347.67
143	Small	111421	2	\$8.00	\$4.00
144	Small	424510	3	\$75.00	\$25.00
145	Small	444220	2	\$790.32	\$395.16
146	Small	111998**	2	\$321.00	\$160.50
147	Small	111998**	2	\$371.00	\$185.50
148	Small	111211	20	\$134.25	\$6.71
149	Small	424990	2	\$47.00	\$23.50
150	Small	111998**	15	\$934.06	\$62.27
152	Small	111998**	2	\$16.00	\$8.00
153	Small	115114	****2.5	\$63,131.49	\$25,252.60
154	Small	111199	8	\$30,343.00	\$3,792.88
155	Small	493130	10	-\$296.00	-\$29.60
156	Small	444220	****14.5	\$378.00	\$26.07
157	Small	424910	32	\$356.22	\$11.13
159	Small	111199	2	\$16.14	\$8.07
160	Small	325320	49	\$46.00	\$0.94
163	Small	444220	1	\$105.45	\$105.45
164	Small	111998**	38	\$650.00	\$17.11
165	Small	111998**	9	\$1,638.74	\$182.08
170	Small	561910	40	\$8.00	\$0.20
171	Small	311999	2	\$206.00	\$103.00
173	Small	424910	9	\$455.00	\$50.56
175	Small	111998**	2	\$173.00	\$86.50
179	Small	541618	2	\$52,404.25	\$26,202.13
180	Small	111219	7	\$3,455.21	\$493.60
181	Small	493110	3	\$108.00	\$36.00
182	Small	111998**	6	\$4,565.50	\$760.92
183	Small	111219	29	\$37,115.12	\$1,279.83
185	Small	111998**	2	\$280.50	\$140.25
186	Small	424590	8	\$17,141.38	\$2,142.67
187	Small	111998	1	\$2,526.00	\$2,526.00
188	Small	111998**	1	-\$933.36	-\$933.36
189	Small*	111998**	1	\$8.00	\$8.00
190	Small	424910	7	\$224.00	\$32.00
191	Small*	111998**	1	\$9,811.34	\$9,811.34
193	Small	444220	12	\$462.00	\$38.50
194	Small	488320	28	\$11,098.00	\$396.36

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
196	Small*	453998	1	\$8.00	\$8.00
197	Small	111998**	1	\$1,436.66	\$1,436.66
198	Small	444220	2	\$846.89	\$423.45
199	Small	444220	15	\$43,124.33	\$2,874.96
204	Small	111998**	8	\$140.00	\$17.50
205	Small	111998**	1	\$682.50	\$682.50
208	Small	111219	6	\$1,745.73	\$290.96
209	Small*	111998	1	\$2,771.94	\$2,771.94
210	Small	111998**	1	\$50.00	\$50.00
211	Small*	111998**	1	\$8.00	\$8.00
212	Small	424910	1	\$689.55	\$689.55
213	Small	311999	46	\$7,447.51	\$161.90
214	Small	424910	3	\$259.60	\$86.53
215	Small	424510	5	\$2,934.00	\$586.80
216	Small	424910	12	\$27.00	\$2.25
217	Small	424590	2	\$1,199.92	\$599.96
218	Small	424910	6	\$11.86	\$1.98
219	Small	424590	22	\$3,513.80	\$159.72
220	Small	111998**	2	\$15.95	\$7.97
221	Small	424910	5	\$8.00	\$1.60
227	Small	484110	20	\$1,544.00	\$77.20
228	Small	444220	2	\$8.00	\$4.00
229	Small	423990	2	\$16.00	\$8.00
231	Small	424480	6	\$768.55	\$128.09
232	Small*	111998**	1	\$698.00	\$698.00
233	Small	311224	11	\$2,512.22	\$228.38
235	Small	424590	31	\$1,679.00	\$54.16
237	Small	115114	4	\$22,310.33	\$4,462.07
238	Small	424910	14	\$787.00	\$56.21
239	Small	444220	1	\$74.36	\$74.36
240	Small	424510	****7	\$3,257.90	\$465.41
241	Small	115112	8	\$1,693.76	\$211.72
243	Small	111998	1	\$693.90	\$693.90
244	Small	111940	2	\$1,746.61	\$873.31
245	Small	115114	24	\$1,263.43	\$52.64
246	Small	424910	9	\$45.00	\$5.00
247	Small	424910	4	\$802.00	\$200.50
248	Small	112990	2	\$2,335.00	\$1,167.50
250	Small	424910	6	\$559.00	\$93.17
251	Small	424510	4	\$14,543.81	\$3,635.95
252	Small	424910	16	\$8.00	\$0.50

Business	Business Size	NAICS Code	Estimated Number of Employees	Estimated Cost Increase ***	Cost Per Employee
253	Small	424510	20	\$883.57	\$44.18
255	Small	111219	2	\$1,287.62	\$643.81
Average cost per employee for all small businesses \$1,147.69					
3	Large	424510	38,100	-\$9,205.93	-\$0.24
12	Large	424910	335	\$261.43	\$0.78
18	Large	325412	17,331	\$23,288.79	\$1.34
19	Large	424910	100,000	\$52,764.82	\$0.53
31	Large	424910	350	\$559.35	\$1.60
38-41*****	Large	424910	10,703	\$21,251.26	\$1.99
94	Large	311411	****1,500	\$33.00	\$0.02
107	Large	541714	950	\$8.00	\$0.01
125	Large	325998	****375	\$334.08	\$0.89
136	Large	111998	330	\$14,156.55	\$42.90
151	Large	311411	1,016	\$459.00	\$0.45
161-162*****	Large	424910	2,900	\$587.60	\$0.20
174	Large	424910	657	\$3,940.13	\$6.00
176-178*****	Large	424910	5,200	\$127,858.60	\$24.59
201-202*****	Large	424910	2,700	\$32,434.74	\$12.01
203	Large	311421	3,375	\$4,437.88	\$1.31
207	Large	424910	4,300	\$410.00	\$0.10
222-226*****	Large	424910	5,134	\$155,956.18	\$30.38
230	Large	813410	3,400	\$280.00	\$0.08
234	Large	424510	1,100	\$839.00	\$0.76
242	Large	611310	3,350	\$708.00	\$0.21
254	Large	424910	2,817	\$73.00	\$0.03
256	Large	424910	805	\$2,941.18	\$3.65
Average cost per employee for 10 percent of large businesses \$5.63					

- * Data on number of employees was unavailable, so calculated as one staff employed.
- ** NAICS code not found, assigned 111998 (the classification for all other miscellaneous crop farming).
- *** Calculated using fees paid by each business in 2019 compared to projected new fees.
- **** Range given for number of employees, therefore median number used for calculation.
- ***** These businesses were billed as separate locations, but had a single "headquarters" location. All locations were combined into one for the analysis and a range was used for the business number.

The average cost per employee for the top 10 percent of large businesses impacted by the proposed amendments is \$5.63. In comparison, the average cost per employee for all small businesses impacted by the proposed amendments is \$1,147.69. Costs per employee vary widely for both large and small businesses, it is evident that small businesses may be disproportionately impacted by the proposed amendment.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* RCW 15.49.370 requires the department to adopt and enforce regulations for certifying seeds and collect fees for those services.

The seed program is entirely funded by fees paid by businesses requesting service. The program does not receive any general fund dollars. In order to sustain the program, fees need to be at a level necessary to cover the cost of providing service. Due to mandated wage increases, cost increases for

goods and services, and increased cost for agency overhead, the fees currently set in rule are no longer able to cover the costs of providing these services. The agency determined the increase is necessary in order to maintain the current level of service provided by the program. Reducing, modifying, or eliminating the amount in which the proposed fees are increased would lower the level of service the program is currently providing, potentially to a point that the program would not be operational at all and would be in conflict with the statutory mandate.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements: There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) Reducing the frequency of inspections: Inspections are a fundamental part of the seed program and are required in order to complete the necessary services offered by the program. Therefore, any reduction in the number of inspections would have a negative impact on stakeholders and the industry as a whole. The number and frequency of inspections is mandated by AOSCA or foreign export requirements.

(d) Delaying compliance timetables: Delaying compliance timetables is not a viable mitigation measure. The proposed rule amendment is necessary to maintain the financial health of the Seed Program and ensure its continued operation. Delaying compliance timetables would result in a financial deficit making the program unable to perform required duties. This could negatively impact businesses in the industry.

(e) Reducing or modifying fine schedules for noncompliance: The fee schedule does not include any fine schedules for noncompliance. There are no fine schedules associated with the proposed rule amendment.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates: The program identified several services that are charged separately that would be combined, fees that could be removed, fees that could be decreased and fees that remain the same. For example:

- Fescue purity for the species of Blue, Hard, Idaho and Sheep require an ammonia test per the rules to certify seed. This service was at the additional cost of \$33 per sample. The test is part of the purity work to distinguish species from each other. The new proposed fee for just the purity work has increased substantially. To not cause an additional higher price, the ammonia test will now be included because it is essential and required for final seed certification. It mitigates additional costs from combining the two required tests into one service and fee.
- The fluorescent exam for annual and perennial ryegrass will be included for final certification seed samples. This service was at the additional cost of \$29 per sample. The test is part of the purity work to distinguish species from each other. The new proposed fee for just the purity work has increased substantially. To not cause an additional higher price, the florescence test will now be included because it is essential and required for final seed certification. It mitigates additional costs from combining the two required tests into one service and fee.
- The wheat sodium hydroxide exam will be included for final certification seed samples. This service was at the additional cost of \$23 per sample. The test is part of the purity work to distinguish red and white wheat contaminants from each other within the sample. The new proposed fee for just the purity work has increased substantially. To not cause an additional higher price, the sodium hydroxide test will now be included because it is essential and required for final seed certification. It mitigates additional costs from combining the two required tests into one service and fee.
- The current fee schedule charges both a minimal acreage fee per inspection and the production fee by cwt to cover the cost of the crop inspection and printing tags. By removing the cwt and charging the acreage fee for both the seedling and crop inspection, this pays the program for the services at the time rendered while the producer does not pay a production fee by cwt at the time a sample is sent to the lab. The cwt production fee structure allowed the program to increase revenue during the years when yield is high and pounds per seed lot increased and gave the producer a break during a low yielding production years. Not all seed that comes to the lab is finally certified with a tag. Thus the producer paid a production fee without obtaining the last final documents of tags. The new acreage fee structure has a producer pay for the services they use when requested by billable acreage fees for a seedling and/or a crop inspection plus the actual per tag cost. If the producer decided to laboratory test but not tag the seed lot, they would not already pay for a production fee designed to cover the cost of tags and back pay the program for a field inspection. This reduced the number of times a producer is billed when the decision is to not proceed to final certification after a field inspection and laboratory seed sample is received. The production fee by cwt for blending seed was also removed. The blending of two certified seed lots will take an application fee per request plus the actual cost of each tag.
- The previous fee schedule for a purity and noxious weed analysis were billed out as separate fees. The noxious weed analysis is requested for specific states or regions. Instead of billing for two separate services, the new structure will include one noxious weed analysis with a purity analysis request. This combines two services into one fee when two were normally billed.
- Removed the assessment fee for blending certified seed.
- A few services remain the same and have not increased. The current time study for the staff labor and inputs of resources indicates the fee should remain the same. The revision of reports upon request from customers, the shipping and handling fee, plus the cost for the annual and rough bluegrass quarantine per acre fee will all remain the same.

No other mitigation techniques were suggested by small businesses or small business advocates.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

A combination of both small and large business were engaged for each outreach in Table 7.1 - Stakeholder Outreach. The need for the program to increase fees was dis-

ussed with the previously appointed seed advisory committee (SAC) members between 2017 and 2019 and for the first time with the currently appointed SAC members during the annual budget meeting, which was open to the public, in November 2019. These members met and reviewed the budgetary needs of the program in 2019 and again in March 2021. SAC members represent each crop group and membership is split to include both large and small businesses. Indi-

vidual companies were contacted in various regions and across many crop production groups. An annual budget report was provided at the annual Washington state crop improvement association (WSCIA) meeting which is an open public meeting. The discussions related to budget and staffing levels have been continued at the quarterly WSCIA board meetings.

Table 7.1 - Stakeholder outreach.

Date	Organization Name	Topics Discussed
17-Aug	Seeds Inc.	Seed program budget report, fund balance, and the potential to increase fees.
17-Oct	Columbia River Seed	Seed program budget report, fund balance, and the potential to increase fees.
17-Oct	Field Rep Meeting	The potential of needing to raise fees.
17-Oct	End of Field Season Meeting	Potential to increase fees. The concept of charging upfront for certification fees in field per acre fees.
17-Oct	Rainier Seeds	Seed program budget report, fund balance, and the potential to increase fees.
17-Nov	Seed Advisory Committee/WSCIA Annual Meeting	Seed program budget report, fund balance, and the potential to increase fees.
17-Nov	Landmark Seed Co.	Seed program budget report, fund balance, and the potential to increase fees.
17-Dec	Trufgrass [Turfgrass] Commission	Seed program budget report, fund balance, and the potential to increase fees. The concept of charging upfront for certification fees in field per acre fees.
18-Jan	WSCIA Board of Directors Meeting	Seed program budget report, fund balance, and the potential to increase fees.
18-Feb	Alforex	The concept of charging upfront for certification fees in field per acre fees.
18-Feb	S&W Seed Company	The concept of charging upfront for certification fees in field per acre fees.
18-Feb	Central Bean Company	The concept of charging upfront for certification fees in field per acre fees.
18-Feb	Jacklin Seed Company	The concept of charging upfront for certification fees in field per acre fees.
18-Apr	Washington North/Idaho Seed Association	Seed program budget report, fund balance, and the potential to increase fees.
18-May	Alfalfa Commission Meeting	The potential of needing to raise fees.
18-Aug	Washington North/Idaho Seed Association	Seed program budget report, fund balance, and the potential to increase fees.
18-Aug	WSCIA Board of Directors Meeting	The potential of needing to raise fees.
18-Sep	Washington North/Idaho Seed Association	Seed program budget report, fund balance, and the potential to increase fees.
18-Aug	WSCIA Board of Directors Meeting	The potential of needing to raise fees.
18-Oct	Washington North/Idaho Seed Association	Seed program budget report, fund balance, and the potential to increase fees.
18-Oct	End of Field Season Meeting	Potential to increase fees.
18-Nov	WSCIA Board of Directors Meeting	Potential to increase fees.
18-Nov	Seed Advisory Committee/WSCIA Annual Meeting	Seed program budget report, fund balance, and the potential to increase fees.
18-Dec	Turfgrass Commission Meeting	Potential to increase fees.
19-Jan	Turfgrass Commission Meeting	Potential to increase fees.
19-Jan	Oilseed Commission Meeting	Potential to increase fees.

Date	Organization Name	Topics Discussed
19-Jan	WSCIA Board of Directors Meeting	Potential to increase fees.
19-Mar	Alfalfa Commission Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Mar	Turfgrass Commission Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Apr	Oilseed Commission Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-May	Alfalfa Commission Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-May	Skagit Co. Commissioners Meeting/ PSSGA Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Jun	WSCIA Board of Directors Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Jun	WSCIA General Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Jul	Oilseed Commission Meeting	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Aug	New Genetic Hemp Field Tour	Need to increase fees. Potential to modify hemp field standards to match AOSCA standards.
19-Aug	Washington North/Idaho Seed Association	Need to increase fees. Internal audit of finances identified error in interest calculations and making adjustments to accounts.
19-Sep	Turfgrass Commission Meeting	Need to increase fees.
19-Sep	WSCIA Board of Directors Meeting	Need to increase fees.
19-Sep	Alfalfa Commission Meeting	Need to increase fees.
19-Oct	Seed Advisory Committee Meeting	Need to increase fees.
19-Oct	End of Field Season Meeting	Need to increase fees.
19-Nov	WSCIA General Meeting	Need to increase fees.
19-Nov	Seed Advisory Committee/ WSCIA Annual Meeting	Seed program budget report, fund balance, and the need to increase fees. Internal audit completed of finances identified error in interest calculations and making adjustments to accounts. Moving to a new accounting system.
19-Nov	Oilseed Commission Meeting	Potential to increase fees.
20-Feb	Seed Advisory Committee Meeting	Seed program budget report, fund balance, and the need to increase fees. Internal audit completed of finances identified error in interest calculations and making adjustments to accounts. Moving to a new accounting system.
20-Mar	Washington North/Idaho Seed Association	Need to increase fees. Moving to a new account[ing] system.
20-Jun	Turfgrass Commission Meeting	Need to increase fees.
20-Jun	WSCIA Board of Directors Meeting	Need to increase fees. Moving to a new account[ing] system.
20-Jun	WSCIA General Meeting	Need to increase fees.
20-Sep	Alfalfa Commission Meeting	Need to increase fees. Moved to a new accounting system. Collecting data on the new accounting system and time study of all services.
20-Oct	End of Field Season Meeting	Need to increase fees.

Date	Organization Name	Topics Discussed
20-Nov	WSCIA Board of Directors General Meeting	Need to increase fees.
20-Nov	Canola Commission Meeting	Need to increase fees.
20-Dec	Turfgrass Commission Meeting	Need to increase fees.
21-Jan	Turfgrass Commission Meeting	Need to increase fees.
21-Feb	Turfgrass Commission Meeting	Need to increase fees.
21-Feb	WSCIA Board of Directors Meeting	Need to increase fees.
21-Feb	Alfalfa Commission Meeting	Need to increase fees.
21-Feb	WSCIA General Meeting	Need to increase fees.
21-Mar	Seed Advisory Committee Meeting	Seed program budget report, fund balance, and the need to increase fees. The concept of charging upfront for certification fees in field per acre fees.
21-Mar	Kappa Seed	Need to increase fees.
21-Mar	Great Basin Seed	Seed program budget report, fund balance, and the need to increase fees. The concept of charging upfront for certification fees in field per acre fees.
21-May	BFI, Inc.	Seed program budget report, fund balance, and the need to increase fees. The concept of charging upfront for certification fees in field per acre fees. Understands the need for increase. No problem with the increase. Only concerned on specifics of native seed tagging and improved methods to ID and tag.
21-May	Northstar, Canada	Understands the need to increase fees. Only request is to not wait 13 years before next increase. Desires smaller increases more frequently.
21-May	Brassica Grower/Producer Meeting	Requested additional rule making to change the Brassica quarantine. Agreed after the fee increase as that is priority. Explained need for more outreach to other Brassica crops/fresh markets/cover crop markets for outreach. Fee work is priority and should be finished by September. Follow meeting on quarantine to resume after Labor Day 2021.
21-May	Alfalfa Commission Meeting	Seed program budget report, fund balance, and the need to increase fees. The concept of charging upfront for certification fees in field per acre fees.
21-May	Shane Johnson, Ag. Management	Distribute fee information to all commodity commission board members.
21-May	Seed Advisory Committee Meeting	Reviewed fee proposals for each service, documented questions.
21-Jun	Alfalfa Seed Research Day	Seed program services available and the engagement of growers and stakeholders for rule-making process and the fee analysis methods.
21-Jun	Seed Advisory Committee Meeting	Rule-making update.
21-Jun	WSCIA Board of Directors	Discussed the need for a fee increase to maintain operations. If not, may discontinue other services with a down size in staffing. Reduced staff will increase the backlog.
21-Jun	Barenbrug USA, Production Manager	Discussed fee proposal rates and roll out period of when potentially new fees are active. Contracted growers are complaining that budgets for the year are already set for 2021. Explained a cross over period for the old fees and new field acreage fees so that it is not a double dipping scenario.
21-Jul	Oilseed Commission Meeting	Expressed the need to increase fees and if not accomplished will assess priority services and may discontinue other services with a down size of staffing. A summary email of WSDA activities is circulated to the committee members not in attendance. Meeting did not meet a quorum.

Date	Organization Name	Topics Discussed
21-Jul	Clearwater Seed	Expressed the need to increase fees and if not accomplished will assess priority services and may discontinue other services with a down size of staffing. Discussed when to implement field fees. Discussed increased regulatory seed actions in the state to reduce fraud to industry and customers.
21-Jul	Rainier Holdings, LLC	Expressed the need to increase fees and if not accomplished will assess priority services and may discontinue other services with a down size of staffing. Discussed when to implement field fees. Discussed increased regulatory seed actions in the state to reduce fraud to industry and customers.
21-Jul	Syngenta	Expressed the need to increase fees and if not accomplished will assess priority services and may discontinue other services with a down size of staffing. Discussed when to implement field fees. Discussed late fees and how to reduce these fees with field application timing. Discussed phytosanitary certificate applications and USDA auditing methods. Discussed use of laboratory services to reduce their backlog for TZ and purity services.
21-Jul	Washington Wheat Commission	Discussed when the next step is implemented for CR-102. Added emails to the distribution list for the public hearing announcement.
21-Jul	Idaho Crop Improvement Association	Discussed their current fee schedule and rates for services to document the comparison to the new proposed Washington fees. Learned with the per acre fee there is additionally still a production fee charged by cwt and crop type.
21-Jul	Montana Crop Improvement Association	Discussed their current fee schedule and rates for services to document the comparison to the new proposed Washington fees. Learned with the per acre fee there is additionally still a production fee charged by cwt and crop type.
21-Aug	Progene, LLC	Discussed the fee increase and how it relates to this specific company.
21- Sep	Alfalfa Seed Commission	Discussed next steps to proceed with the proposed fee increase and proposed implementation date.
21-Oct	Forage Genetics-Nampa, Idaho	Provided proposed new fee schedule, fact sheet and company specific data to review. Identified proposed implementation of new fee schedule.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The Regulatory Fairness Act requires an agency to estimate the number of jobs created or lost (due to compliance with the proposed rule making) in their SBEIS - RCW 19.85.040.

The Washington state office of financial management's input/output model is the resource the department used to determine estimated jobs created or lost based on the proposed rule making.

The model depicts interindustry relationships within the Washington state economy. The model takes as input the cost to each industry NAICS code (based on the average cost of compliance to the proposed rule) and calculates, among other things, employment change (jobs created or jobs lost). The estimated employment change is measured in full time employees (FTE) to each business sector.

Table 8.1 below shows the average cost of compliance for each industry affected by the propose rule making and the estimated employment change to that industry. A negative number indicates a job loss, while a positive number indicates a job created.

NOTE: Employment change calculated into FTE's for each NAICS code is NOT per business but rather a total over the entire business industry.

Table 8.1 - Jobs created or lost.

NAICS Code	Average Cost of Compliance	Estimated Employment Change
111140	\$278.04	-0.06
111191	\$550.21	0.00
111199	\$15,179.57	-0.96
111211	\$134.25	0.00
111219	\$5,375.88	-0.64
111334	\$624.92	-0.02
111339	\$548.97	-0.16
111421	\$211.79	-0.01
111422	\$8.00	0.00
111940	\$702.31	-0.08
111998	\$2,929.01	-0.24
112111	\$967.25	-0.05
112990	\$3,181.95	-0.02
115112	\$1,693.76	-0.09
115114	\$23,229.96	-1.44

NAICS Code	Average Cost of Compliance	Estimated Employment Change
115115	\$171.88	-0.01
311224	\$2,512.22	0.00
311411	\$246.00	0.00
311421	\$4,437.88	-0.03
311999	\$3,826.76	-0.02
325320	\$46.00	0.00
325412	\$23,288.79	-0.55
325998	\$334.08	0.00
339999	\$122.50	-0.01
423920	\$8.00	0.00
423990	\$16.00	0.00
424480	\$4,656.28	-0.26
424510	\$9,722.76	-0.14
424590	\$4,708.42	-0.04
424910	\$10,412.72	-1.07
424930	\$(118.62)	0.00
424990	\$29,173.01	-2.32
425120	\$3,323.33	-4.53
444220	\$2,972.60	-1.05
445230	\$8.00	0.00
445299	\$0.00	0.00
453998	\$8.00	0.00
484110	\$1,544.00	-0.17
484121	\$560.36	-0.18
488320	\$5,711.00	-0.34
488510	\$0.00	0.00
493130	\$11,382.15	-0.37
523130	\$398.00	-0.34
541611	\$794.50	-1.60
541620	\$217.30	-0.06
541690	\$10,704.97	-12.63
541714	\$551.32	-0.33
561730	\$0.00	0.00
561910	\$8.00	-0.48
611310	\$708.00	-0.28
813410	\$280.00	-0.85
Total estimated employment change across all industries		-35.28

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia WA 98504-2560, phone 360-902-1802, fax

360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

October 20, 2021
Jessica Allenton
Assistant Director

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-020 Schedule of charges—Billing policies and procedures. (1) Accounts.

(a) All billable services provided for under chapter 15.49 RCW are due and payable upon billing by the department. For the convenience of established accounts and in accord with good business practices, the department provides a monthly billing service. Accounts not paid in full within ~~((thirty))~~ 30 days of billing are considered delinquent.

(b) ~~((On all debts due and payable after July 28, 1991,))~~ All delinquent accounts are assessed a late charge equal to two percent per month, or portion of a month, on the unpaid balance.

(c) Except for established accounts where there is a reasonable expectation of additional charges during a calendar month, the minimum billable amount through the monthly billing system is ~~((twenty dollars))~~ \$20. All billable services of less than ~~((twenty dollars))~~ \$20 are due and payable on the date that service is rendered.

(d) No person with an account ~~((ninety))~~ 90 days or more in arrears may receive service except on the basis of payment in full at the time service is rendered. Accounts in arrears may be subject to legal action for collection and are not restored to monthly billing status until all past due amounts are paid-in-full.

(e) Accounts that become ~~((ninety))~~ 90 or more days in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

(2) Unless otherwise provided for in rule, requests for refund fees or assessments must be submitted to the department by June 30th of the year following payment of the fee or assessment.

(3) Fees for services not listed in rule are set on the basis of the actual cost to the department of agriculture, or the most appropriate fee established by rule.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-105 Annual seed inspection charge. (1) Each person required to obtain a seed labeling permit, pursuant to RCW 15.49.400, of the Washington State Seed Act, must also, pursuant to RCW 15.49.310 and 15.49.370, pay a general seed inspection charge annually to the department in the amount of ~~((eleven))~~ 28 cents per ~~((one hundred dollars))~~ \$100 gross annual dollar sales in excess of ~~((ten thousand dollars))~~ \$10,000 of agricultural and/or vegetable seed distributed in this state during the preceding fiscal year, except that no assessment shall be collected on:

(a) Seed for which the assessment has been previously collected, except when such seed is relabeled;

- (b) Agricultural or vegetable seed distributed out-of-state;
- (c) Seed distributed in containers of four ounces or less;
- (d) Stock seed; ~~((and))~~ or
- (e) Seed distributed by governmental agencies~~((;))~~ such as, but not limited to, the United States Department of Agriculture national foundation seed project. Agricultural and/or vegetable seeds distributed under bailment contract are valued at the producer-conditioner agreement rate in lieu of sale.

- (2) The seed assessment fees for the fiscal period beginning July 1st through June 30th are payable on February 1st of the following calendar year.
- (3) The seed assessment ~~((may))~~ will accompany the annual application for the seed labeling permit. A penalty of ~~((fifteen))~~ 25 percent of the assessment fee or a minimum of ~~((twenty dollars))~~ \$28, whichever is greater, is added to all assessments not paid by February 1st.
- (4) The annual ~~((seed-labeling))~~ seed labeling permit ~~((may))~~ will not be issued until all seed assessments and penalties are satisfied.

NEW SECTION

WAC 16-303-117 Seed program testing categories. (1) Seed testing categories and associated crop kinds for WAC 16-303-200 and 16-303-210 are as follows:

Category	Crop Kind	Additional Crops in each Category *1
1	Alfalfa and Clover	Alfalfa, Black Medic, Clover, Milkvetch, Sainfoin, Trefoil
2	Bean	Bean
3	Beet	Beet
4	Bentgrass, Redtop	Bentgrass, Redtop
5	Bluegrass	Bluegrass, all types except Native and Reclamation
6	Brassica Species	Brassica Species, Camelina
7	Brome	Brome: Mountain, Smooth, Meadow
8	Fescue	Fescue: Tall and Meadow
9	Fescue, all others	Fescue: Arizona, Blue, Blue Hard, Chewings, Creeping, Hard, Idaho, Red, Sheep
10	Flax	Flax, all types
11	Hemp	Hemp, all types
12	Orchardgrass	Orchardgrass
13	Peas and other large seeded legumes	Peas, Chickpeas, Lentil, Lupine, Vetch
14	Ryegrass (perennial or annual)	Ryegrass (perennial or annual)
15	Sudangrass	Sudangrass
16	Timothy	Timothy
17	Fruit and Vegetable	Fruit and Vegetables: Arugula, Asparagus, Any Berries, Cantaloupe, Carrot, Celery, Corn, Coriander, Cucumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Swiss chard, Spinach, Squash, Tomato, Watermelon
18	Grain (500 g. or 1000 g.)	Wheat, Triticale, Sunflower, Sorghum, Safflower, Rye, Rice, Millet, Buckwheat, Barley, Oats, Emmer, Spelt
19	Other native species and flowers (test requires 400 seed TZ according to AOSA rules)	Green needlegrass, Needle and Thread, Penstemon
20	Native and Reclamation Grass	Bluestem, Buffalograss, Lovegrass, Sand dropseed, Sideoats, Squirreltail, Wheatgrass (Crested, Intermediate, Pubescent, Siberian, Slender, Tall, Thickspike, and Western), Wildrye, Indian ricegrass, Junegrass, Oatgrass, Native and Reclamation bluegrass

Category	Crop Kind	Additional Crops in each Category *1
21	Woody Plants and Forbs (natives)	Bitterbrush, Echinacea, Kochia, Yarrow, Sagebrush, Rabbitbrush, Native buckwheat, Native clover

*1 Crops not listed in the above table will be charged by the category that they best fit into.

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-303-200 Seed program testing fees. (1) Seed testing fees are as follows:

Category	Crop-kind	PURITY	GERM1	1Z	Additional Crops in each Category/2
1	Agricultural Grasses	40.00	25.00	45.00	Alkaligrass, Bermudagrass, Canarygrass, Fox-tail, Switchgrass, Timothy, Zoysia
2	Alfalfa & Clover	31.00	27.00	45.00	Alfalfa, Black Medic, Clover, Lupine, Milkveteh, Sainfoin, Trefoil
3	Beans	29.00	27.00	45.00	Beans
4	Beets	42.00	47.00	45.00	Beets, Swiss chard, Spinaeh
5	Bentgrass, redtop	72.00	38.00	45.00	Bentgrass, Redtop
6	Bluegrass	49.00	33.00	45.00	Bluegrass, all types
7	Brassica Species	75.00	38.00	45.00	Brassica Species
8	Brome	51.00	27.00	45.00	Brome : Mountain, Smooth, Meadow
9	Fescue	40.00	27.00	45.00	Fescue : Tall and Meadow
10	Fescue, all others	49.00	27.00	45.00	Fescue : Arizona, Blue, Blue Hard, Chewings, Creeping, Hard, Idaho, Red, Sheep
11	Flax	31.00	27.00	45.00	Lewis flax
12	Industrial hemp	50.00	40.00	45.00	
13	Orchardgrass	55.00	29.00	45.00	Orchardgrass
14	Peas and other large-seeded legumes	31.00	27.00	45.00	Peas, Chickpeas, Lentil, Vetch
15	Primrose	31.00	27.00	45.00	Primrose
16	Ryegrass	49.00	25.00	45.00	Ryegrass, (Perennial or Annual)
17	Small burnet	31.00	27.00	45.00	Small burnet
18	Sudangrass	31.00	27.00	45.00	Sudangrass
19	Vegetables	31.00	27.00	49.00	Vegetables : Arugula, Asparagus, Cantaloupe, Carrot, Celery, Corn, Coriander, Cueumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Squash, Tomato, Watermelon
20	Grains	31.00	27.00	45.00	Wheat, Triticale, Sunflower, Sorghum, Saf-flower, Rye, Rice, Millet, Buckwheat, Barley, Oats, Emmer, Spelt
21	Wheatgrass, Wild-rye, other native-species Group A	84.00	33.00	45.00	Bluestem, Buffalograss, Lovegrass, Penste-mon, Sand dropseed, Sidecoats, Squirreltail; Intermediate, Pubescent, Tall, Thickspike, Slender, and Western wheatgrasses; Small-seeded wildrye
22	Wheatgrass, Wild-rye, other native-species and flowers Group B	75.00	33.00	45.00	Bitterbrush, Echinacea, Indian ricegrass, June-grass, Kochia, Oatgrass, Indian ricegrass, Blue and other large-seeded wildrye, Crested and Siberian wheatgrasses

((Category	Crop-kind	PURITY	GERM⁴	TZ	Additional Crops in each Category/2
23	Wheatgrass, Wild-rye, other native-species and flowers-Group-C	75.00	123.00/3	45.00	Green needlegrass, Needle & Thread, Penstemon

/1 Standard 400 seed germination test.

/2 Crops not listed in the above table will be charged by the category that they fit into.

/3 Germination requires 400 seed TZ according to AOSA rules.))

Category	Purity W/ Noxious	GERM¹	TZ	Sample Processing per request	Manual Sample Processing per request
<u>1</u>	\$76.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>2</u>	\$68.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>3</u> ^{*2}	\$70.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>4</u>	\$153.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>5</u>	\$118.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>6</u>	\$117.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>7</u>	\$106.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>8</u>	\$106.00	\$76.00	\$101.00	\$8.00	\$13.00
<u>9</u>	\$106.00	\$76.00	\$101.00	\$8.00	\$13.00
<u>10</u>	\$76.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>11</u>	\$70.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>12</u>	\$76.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>13</u>	\$68.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>14</u>	\$117.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>15</u>	\$76.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>16</u>	\$76.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>17</u>	\$68.00	\$60.00	\$101.00	\$8.00	\$13.00
<u>18</u> ^{*3}	500 g. \$68.00	\$60.00	\$101.00	\$8.00	\$13.00
	1000 g. \$136.00				
<u>19</u>	\$90.00	\$146.00 ^{*4}	\$202.00 ^{*5}	\$8.00	\$13.00
<u>20</u>	\$90.00	\$70.00	\$101.00	\$8.00	\$13.00
<u>21</u>	\$90.00	\$82.00	\$101.00	\$8.00	\$13.00

*1 Standard 400 seed germination test.

*2 Additional sprout counts incur hourly charge.

*3 Includes sodium hydroxide test.

*4 Germ includes dormant TZ count.

*5 Test requires 400 seed TZ according to AOSA rules.

(2) There will be no refund on completed tests. Work will be billed proportional to the amount completed at the

time of cancellation. Minimum billed will be one quarter of the hourly rate.

(3) Additional billing will be in 15-minute increments with a minimum of one quarter of the hourly rate for dirty or heavy inert samples which require hand picking for purity analysis.

(4) Additional requests will incur another sample processing check-in fee.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-210 Fees for special seed tests.

((Test	Fee	Additional Information
(1) All states noxious weed examination	\$36.00	
(2) Dormant Seed Test	\$45.00	

((Test	Fee	Additional Information						
(a) For crops requiring a 400 seed TZ as required in the AOSA rules	\$90.00							
(b) This fee also applies to paired tests when required by AOSA rules								
(3) Cold (vigor) test for wheat	\$70.00							
(4) Crop or weed exam		Standard noxious amount from AOSA rules						
(a) Turf type and other small seeded grasses	\$41.00	Kentucky bluegrass, timothy, alkaligrass, fine-leaved fescues						
(b) Small seeded legumes and medium-seeded crops	\$47.00	Brassicacae, ryegrass, tall fescue						
(c) Wheatgrass and native species	\$54.00							
(d) Grains and large seeded legumes	\$24.00							
(5) Fescue seed ammonia test	\$33.00	Required on all certified Blue, Hard, and Sheep fescues						
(6) Fluorescence test (400 seed test)	\$29.00	Required on all Perennial and Annual ryegrass samples						
(7) Miscellaneous services, samples requiring extra time, field run samples, etc.	\$40.00/hour							
(8) Pest and disease (phyto exam) and/or soil exam	\$39.00							
(9) Quarantine tests on seed								
Bluegrass and Bentgrass	\$20.00/5 grams							
Other grasses	\$20.00/10 grams							
(10) Rules test—Canadian	PURITY	GERMINATION						
Alfalfa, clover, peas, lentils	\$35.00	\$27.00						
Kentucky bluegrass	\$53.00	\$33.00						
Bentgrass	\$78.00	\$38.00						
(11) Rules test— I.S.T.A.	PURITY	GERMINATION						
Alfalfa, clover, peas, lentils	\$35.00	\$33.00						
Kentucky bluegrass	\$53.00	\$33.00						
(12) Moisture test	\$33.00							
(13) Seed Count								
(a) Large seed	\$10.00							
(b) Small seed	\$13.00							
(14) Sod seed analysis	<table border="1" style="display: inline-table; vertical-align: top;"> <tr> <td style="padding: 2px;">Bluegrass</td> <td style="padding: 2px;">\$81.00</td> </tr> <tr> <td style="padding: 2px;">Fescue</td> <td style="padding: 2px;">\$56.00</td> </tr> <tr> <td style="padding: 2px;">Ryegrass</td> <td style="padding: 2px;">\$45.00</td> </tr> </table>	Bluegrass	\$81.00	Fescue	\$56.00	Ryegrass	\$45.00	
Bluegrass	\$81.00							
Fescue	\$56.00							
Ryegrass	\$45.00							
(15) Sodium Hydroxide test for presence of red and/or white wheat	\$23.00							
(16) Undesirable grass species test (includes an all states noxious test) examination (UGS test)	\$76.00							
(17) Germination test in soil	\$54.00							
(18) Wheat bioassay test	\$54.00							

(Test	Fee	Additional Information
(19) Germination on mixtures Germination requiring embryo excision	\$40.00 per hour for separation of kinds or preparation time	This is in addition to the established germination fee))

Miscellaneous lab testing fees are as follows:

Miscellaneous Lab Fees - Part A											
Category	Sod or quality seed analysis ^{*1}	Undesirable grass species test, no other purity requested	Paired tests or 400 TZ when required by AOSA (from section 200)	Crop or weed exam standard AOSA working amount (in addition to other tests requested)	Quarantine tests on seed			Rules test-Canadian (No grade report)		Rules test-ISTA (No orange certificate)	
					Bluegrass (25 gram test)	Bentgrass and redtop (10 gram test)	Other seed stock (25 gram test)	Purity	Germ	Purity	Germ
1	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$76.00	\$59.00	\$76.00	\$59.00
2	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$68.00	\$59.00	\$68.00	\$59.00
3 ^{*2}	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$70.00	\$68.00	\$70.00	\$68.00
4	N/A	\$114.00	\$202.00	\$76.00	N/A	\$86.00	N/A	\$153.00	\$70.00	\$153.00	\$70.00
5	\$126.00	\$114.00	\$202.00	\$76.00	\$139.00	N/A	N/A	\$117.00	\$70.00	\$117.00	\$70.00
6	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$117.00	\$60.00	\$117.00	\$60.00
7	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$106.00	\$70.00	\$106.00	\$70.00
8	\$126.00	\$114.00	\$202.00	\$76.00	N/A	N/A	\$88.00	\$106.00	\$70.00	\$106.00	\$70.00
9	\$126.00	\$114.00	\$202.00	\$76.00	N/A	N/A	\$95.00	\$106.00	\$76.00	\$106.00	\$76.00
10	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$106.00	\$70.00	\$106.00	\$70.00
11	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$70.00	\$60.00	\$70.00	\$60.00
12	\$126.00	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$76.00	\$70.00	\$76.00	\$70.00
13	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$68.00	\$59.00	\$68.00	\$59.00
14	\$126.00	\$114.00	\$202.00	\$76.00	N/A	N/A	N/A	\$117.00	\$76.00	\$117.00	\$76.00
15	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$106.00	\$70.00	\$106.00	\$70.00
16	\$126.00	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$76.00	\$70.00	\$76.00	\$70.00
17	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$68.00	\$60.00	\$68.00	\$60.00
18	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$68.00	\$60.00	\$68.00	\$60.00
	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$139.00	\$60.00	\$139.00	\$60.00
19	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$70.00	\$70.00	\$70.00	\$70.00
20	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$125.00 ^{*1}	\$70.00	\$125.00 ^{*1}	\$70.00
21	N/A	N/A	\$202.00	\$76.00	N/A	N/A	N/A	\$125.00 ^{*1}	\$82.00	\$125.00 ^{*1}	\$82.00

*1 Minimum one hour, then billed in 15 minute increments.

*2 Additional sprout counts incur hourly charge.

Miscellaneous Lab Fee - Part B	
Additional sodium hydroxide exam (wheat only)	\$47
Ammonia test (required for Fescue certification)	\$46
Bioassay (variety specific)	\$96
Broomrape (Orobanch minor) in red clover and other species (dry method)	\$110
Canadian seed grade report (Canadian test required)	\$45
Cold (vigor) test for wheat with Palouse soil	\$107
Cold test without soil	\$57
Cold test with soil - Specify soil type ^{*1}	\$65/hour
Dust like species exam (dry method) including broomrape (Orobanch minor)	\$152
Dodder exam	\$90
EC norms conversion from AOSA report	\$45

Miscellaneous Lab Fee - Part B	
Electrical conductivity (EC)	\$158
Fluorescent test (all perennial and annual ryegrass)	\$40
Germination test in soil ^{*1}	\$65/hour
Hourly charge (applies to especially contaminated or extraordinary samples, e.g., sample prep for coated seed; also used for custom work such as sample preparation, special bulk searches). ^{*1}	\$65/hour
Mill check ^{*1}	\$65/hour
Miscellaneous service, in dirt samples, field run samples, cleaning inert ^{*1}	\$65/hour
Moisture test (oven) ^{*1}	\$65/hour
Moisture test/Dickey-John test	\$63
Noxious weed conversion fee	\$45
Noxious weed search in animal feed pellets, bird seed or organic matter ^{*1}	\$65/hour
Pest and disease (phytosanitary exam) and/or soil exam including sclerotinia, ergot, smut	\$95
Potassium iodine/iodide test ^{*1}	\$65/hour
Preliminary germination percent via email	\$15
Preclean quality grain exam	\$139
Seed coat dehull for TZ (Sanfoin/oat) ^{*1}	\$65/hour
Seed count, manual ^{*1}	\$65/hour
Seed count, mechanical	\$24
Seed mixture purity exam, each crop component	\$76
Species or veskof exam	\$222
Stress germination exam ^{*1}	\$65/hour
TKW 1000 seed count (total kernel weight/1000 seed)	\$56
Wheat species exam ^{*1}	\$65/hour

^{*1} Billing in 15-minute increments with a minimum of one quarter of the hourly rate.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-230 Official seed sampling or similar service. Seed lots for official sampling must be made available to the inspector upon arrival to avoid assessment of additional fees for standby-time. Standby-time when the inspector is on-site while samples are prepared for official sampling will be billed in 15-minute increments at a minimum of one quarter of the hourly rate.

Fees for official sampling are in addition to travel time and mileage.

<u>Crop</u>	<u>Fee</u>	<u>Minimum charge</u>
Peas, beans, small-grains or seeds of similar size	Standard sampling \$0.09 per-ewt.	\$40.00
	I.S.T.A. sampling \$0.11 per-ewt. plus \$9.00 per lot	\$40.00 plus \$9.00 per lot
For all other kinds	Standard sampling \$0.20 per-ewt.	\$40.00
	I.S.T.A. sampling \$0.24 per-ewt. plus \$9.00 per lot	\$40.00 plus \$9.00 per lot

<u>Crop</u>	<u>Test</u>	<u>Fee</u>	<u>Minimum charge</u>
Peas, beans, small grains or seeds of similar size	Standard sampling	\$0.13 per cwt.	\$90
Peas, beans, small grains or seeds of similar size	I.S.T.A. sampling	\$0.21 per cwt. plus \$13.00 per lot	\$90
For all other kinds	Standard sampling	\$0.28 per cwt.	\$90
For all other kinds	I.S.T.A. sampling	\$0.33 per cwt. plus \$13.00 per lot	\$90

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-240 Fees for blending seed. (1) Blending fee is not applicable to salvage blends.

((Grass option B*	Washington origin seed	\$1.10 per cwt.
Grass option B*	Out-of-state origin	\$0.66 per cwt.
Grass option A and all other blends of other crops		\$0.10 per cwt.
*See WAC 16-303-320, footnote 6 for information on option A and option B.)		

(2) Blending fees are as follows:

<u>Seed Origin</u>	<u>Fee</u>
Washington origin certified seed	\$17.00 Application plus cost of tag
Out-of-state origin certified seed	\$17.00 Application plus cost of tag

(3) See WAC 16-303-350 for tagging fees.

(4) A blend data sheet is filled out with the certifying agency and must be presented at the time of application and maintained by the seed conditioner. Blend data sheet forms can be obtained from the department.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-250 Miscellaneous charges for seed services. Fees for miscellaneous department seed services are as follows:

<u>(Service</u>		<u>Fee</u>
Rush samples (including phone or FAX report if requested at time sample is submitted)		\$16.00
High priority sample – Purity result completed before the end of the next business day. (Special circumstances only. Call ahead for availability.)		\$160.00
Additional mailing of report		\$6.00 each destination
Additional copies of reports		\$3.00 minimum fee
Revised reports		\$11.00 minimum (hourly fee when applicable)
Fee for special shipping and handling service, for example Federal Express, Air Parcel or air freight		\$5.00 plus exact shipping cost
Fee for facsimile transmission of documents		\$1.00 per document
Mileage – Additional or special requested trips		As established by the Washington State Office of Financial Management
Stand by time – Or travel time	\$40.00/hour	Travel time to be charged when special trip is requested.)

<u>Service</u>	<u>Fee</u>
<u>Rush sample (purity started in 48 hours, including phone report if requested at time sample is submitted)</u>	\$136.00
<u>Super rush sample - Purity result completed before the end of the next business day. (Based upon availability with a limit per day, call ahead for availability.)</u>	\$204.00
<u>Paper documents: Additional copies-digital</u>	\$8.00
<u>Paper documents: Additional copies-registered mail</u>	\$8.00 plus exact shipping cost
<u>Samples: Fee for special shipping/packaging for seed samples, plant health samples (live plants) by Federal Express, air parcel or air freight</u>	\$20.00 plus exact shipping cost
<u>All other shipping and handling</u>	\$8.00 plus exact shipping cost
<u>Revised reports</u>	\$15.00 minimum (hourly fee when applicable)
<u>Combined reports</u>	\$15.00 minimum (hourly fee when applicable)
<u>Drive time and mileage for additional or special requested trips</u>	Drive time at hourly rate plus mileage - OFM rate
<u>Field staff stand-by time at warehouse *1*2</u>	\$65/hour
<u>Split seed sample for outsourcing</u>	\$50.00
<u>Digital photo</u>	\$11.00/photo

Service	Fee
<u>Washington Wilderness Hay and Mulch (WWHAM) certification, if conducted at time of seed certification inspection</u>	\$90.00
<u>Washington Wilderness Hay and Mulch (WWHAM) certification, if not conducted at time of seed certification inspection</u>	\$90.00 plus drive time at hourly rate plus mileage - OFM rate
<u>Cancellation of seed test *1</u>	Proportional to work completed prior to cancellation-hourly rate for a minimum of 15 minutes
<u>Hourly rate</u>	\$65/hour

*1 No refund on completed tests or work. Work will be billed proportional to amount completed at the time of request.

*2 Minimum billed will be one quarter of the hourly rate.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-300 Phytosanitary certification of seed—Fees.

Service	Fee	Additional Information
Federal Phytosanitary certificate	\$50.00	
State Phytosanitary certificate	\$45.00	

Service	Fee	Additional Information
Field inspection—All seed except wheat seed (for each required inspection)	\$5.83 per acre, per required inspection	\$55.00 minimum fee, per inspection
Field inspection—Wheat seed only	\$2.33 per acre or fraction thereof	\$55.00 minimum fee, per inspection
Area inspection	\$0.60 per acre	
Late fee—Per application	\$50.00))	

Service	Fee	Additional Information
<u>Federal phytosanitary certificate</u>	<u>\$70.00</u>	<u>Additional hourly fee may apply for consultation and billed at one quarter of the hourly rate</u>
<u>State phytosanitary certificate</u>	<u>\$63.00</u>	<u>Additional hourly fee may apply for consultation and billed at one quarter of the hourly rate</u>
<u>Certificate of origin</u>	<u>\$55.00</u>	<u>Additional hourly fee may apply for consultation and billed at one quarter of the hourly rate</u>
<u>Resignature</u>	<u>\$4.00</u>	<u>Resignature of expired visual *1</u>
<u>Verification</u>	<u>\$4.00</u>	<u>Reexport phytosanitary verification</u>
<u>Phytosanitary field application *2</u>	<u>\$45.00</u>	<u>No refund after processing</u>
<u>Phytosanitary field inspection - All seed (for each required inspection) *2*3</u>	<u>\$8.00 per acre, per required inspection</u>	<u>\$90 minimum fee, per inspection. No refund after inspection is completed</u>
<u>Area inspection *2*3</u>	<u>\$3.11 per acre, per required inspection</u>	<u>Plus travel time and mileage</u>
<u>Late fee - Per field application</u>	<u>\$139.00</u>	<u>Based on scheduling may also include travel time and mileage. After application due date, application may be rejected</u>
<u>Nematode soil sample</u>	<u>\$33.00</u>	<u>Flat fee per sample</u>

Phytosanitary field application due dates are found in WAC 16-301-220.

*1 Prior departmental authorization required in advance and site must meet specific criteria to qualify.

*2 No refund on rejected fields due to findings or results. To be eligible for a refund of the per acre fee, the seed crop application must be withdrawn prior to field inspection.

*3 An outsourced plant health analysis or laboratory exam may be applicable to assess field health and may result in costs separate from the inspection application and acreage fee.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees. In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D. and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

<u>Service</u>	<u>Fee</u>	<u>Additional Information</u>
O.E.C.D. certificate	\$17.00 each	
O.E.C.D. grow out test	\$72.00 each entry	No charge for control entry
O.E.C.D. assessment	cost to program	This is a pass through fee to USDA
O.E.C.D. tagging fee*	\$0.91/ewt.	All grasses except tall fescue
	\$0.55/ewt.	Tall fescue
	\$0.57/ewt.	All other crops

* Minimum tagging fee is \$13.00.)

<u>Service</u>	<u>Fee</u>
<u>O.E.C.D. assessment</u> ^{*1}	<u>Actual cost to program. This is a pass through fee to USDA</u>
<u>O.E.C.D. certificate</u> ^{*2}	<u>\$40.00 each</u>
<u>O.E.C.D. reissued certificate</u>	<u>See Section 250 for additional document copies</u>
<u>O.E.C.D. grow out test</u> ^{*3}	<u>\$100.00 each entry</u>
<u>O.E.C.D. tagging fee</u> ^{*4}	<u>\$17.00 Application plus tag fee cost</u>

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-303-320 Certification fees for seed certified by the department. Seed certification fees apply to seed classes identified in WAC 16-302-015, as follows:

(1) Fees apply to both new and renewal applications.

(2) Seed certification application due dates are specified in WAC 16-302-050.

(3) The ~~((seed processor))~~ applicant for seed certification is responsible for seed certification fees including sampling, testing, ~~((production))~~ tagging and final certification fees, and may accept responsibility for any other additional fees associated with certification. Fees for services such as O.E.C.D. and ~~((sod))~~ quality exams, etc., are in addition to the fees listed in this section.

<u>Seed</u>	<u>Application Fee 1/</u>	<u>Seedling field inspection fee</u>	<u>Seedling producing or field inspection Fee 2/</u>	<u>Late Application Penalty Fee</u>	<u>Reinspection Fee (other than isolation)</u>	<u>Production Fee (includes tagging) 7/10/11/</u>	<u>Seed shipped Out of State (uncleaned)</u>
Alfalfa, Red clover, White clover and Trefoil	\$32.25 per variety per grower	\$54.00 per field	\$2.00 per acre	\$50.00	\$58.00 per field	\$0.57/ewt. 5/	\$0.22/ewt.
Annual grasses	\$32.25 per field	N/A	\$2.00 per acre	\$50.00 per field	\$58.00 per field	\$0.45/ewt.	\$0.22
Bean	\$32.25 per variety per grower	N/A	\$2.00 per acre 3/ (one inspection) \$4.00 per acre 4/ (two inspections)	\$50.00	\$58.00 per field	\$0.57/ewt.	\$0.22/ewt.

*1 An additional O.E.C.D. assessment will be billed on each O.E.C.D. seed lot assessed by USDA-O.E.C.D. authorities.

These charges will be billed in addition to other listed fees.

*2 O.E.C.D. certificate fee does not include required field application, inspection, laboratory fees or tagging.

*3 No charge for control entry.

*4 See WAC 16-303-350 for tagging fee.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-315 ~~((Service fee for sod))~~ Quality seed ~~((tags and))~~ tagging. (1) Service fee for ~~((sod))~~ quality seed tags and tagging shall be \$0.25 per cwt. ~~((Minimum tagging fee is \$13.00.))~~

<u>Service</u>	<u>Fee</u>
<u>Quality Sod tag</u>	<u>\$17.00 Application plus \$0.25 cwt and tag fee</u>
<u>Quality Timothy tag</u>	<u>\$17.00 Application plus tag fee</u>
<u>Quality Orchardgrass tag</u>	<u>\$17.00 Application plus tag fee</u>

(2) Seed lots which meet the field and seed standards will be tagged with a "quality seed" tag per WAC 16-302-395 through 16-302-410 or WAC 16-302-740 through 16-302-756.

(3) Tag fees are specified in WAC 16-303-350.

(4) Quality tagging does not include required field inspection or laboratory analysis.

(Seed	Application-Fee 1/	Seedling field inspection fee	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production-Fee (includes tagging) 7/10/11/	Seed shipped Out of State (uncleaned)
Corn	\$32.25 per field	N/A	\$55.00 first acre \$12.00 ea. additional acre except hybrid corn \$5.35 ea. additional acre	\$50.00	—	\$0.15 per tag-issued	\$4.00 per document
Industrial-hemp	\$32.25 per field	N/A	Hourly rate, travel time and mileage as established in WAC 16-303-250	\$50.00	Additional inspections: Hourly rate, travel time and mileage as established in WAC 16-303-250	\$0.15 per tag-issued; \$15.00 minimum fee	N/A
Perennial-Grasses 6/	\$32.25 per field	\$54.00 per field	\$54.00 per field	\$50.00	\$58.00 per field	Option A \$0.91/ewt. for all grass except tall fescue \$0.55/ewt. tall fescue Option B \$1.26/ewt. (min. \$12.54)	\$0.34
Rapeseed, Canola, and Mustard	\$32.25 per variety per grower	N/A	\$2.00 per acre (one inspection)	\$50.00 per grower	\$58.00 per field	\$0.57/ewt.	\$0.22
Turnip, Rutabaga, Kale	\$32.25 per field	N/A	\$4.00 per acre (two inspections)	\$50.00	\$58.00 per field	\$0.57/ewt.	\$0.22

- 1/ Seed certification application due dates can be found in WAC 16-302-050.
- 2/ Seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.
- 3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.
- 4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.
- 5/ Production fees are billed at completion of laboratory analysis tests. If no seed is tagged, \$0.10 of the \$0.57 per ewt. production fee is refundable.
- 6/ Option A: Inspection and final certification fees are based on pounds sampled and billed upon completion of required laboratory tests.
Option B: Inspection and final certification fees are based on pounds tagged after required laboratory tests are completed. Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

- 7/ Does not include shipping and handling charge for tags.
- 8/ Service inspection of seed fields
Service inspection will be charged the established hourly rate inclusive of travel time and inspection time. This excludes the seedling inspection which is charged according to the above chart.
Service inspections will be charged a mileage fee based upon the OFM mileage rate.
- 9/ Hybrid inspections (pollen counts)
All crops except corn and industrial hemp:
(a) \$48.50 per inspection if done at the time of the certification inspection.
(b) \$135.00 per inspection if not conducted at the time of the certification inspection.
- 10/ Minimum tagging fee is \$13.00.
- 11/ For seed lots in packages of less than 25 lbs., tags are \$0.15 per tag in addition to the production fee.
(2) Other fees associated with grass seed certification:
Out of state origin seed tagged with interagency certification tags:

Grass Option A:	\$0.33 per ewt.
Grass Option B:	\$0.73 per ewt.

- (3) Reissuance of certification tags is \$0.15 per tag or a minimum fee of \$13.00.)
- (4) Certification fees for seed certified by the department are as follows:

<u>Crop</u>	<u>Application Fee</u>	<u>Seedling Field Inspection Fee</u>	<u>Seedling Producing or Field Inspection Fee</u>	<u>Late Application Penalty Fee</u>	<u>Reinspection Fee (other than isolation)</u>	<u>Seed Shipped Out-of-State (uncleaned) Document Fee</u>
<u>Alfalfa, Red clover, White clover and Trefoil</u>	<u>\$45 per field</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Annual grass</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Bean ^{*1*2}</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Camelina</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Corn (Hybrid and nonhybrid) ^{*3}</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$76.00 first acre, \$17 each additional acre</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$8 each document</u>
<u>Hemp</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Perennial grass</u>	<u>\$45 per field</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Radish</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Rapeseed, Canola, and Mustard</u>	<u>\$45 per field</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$3.90 per acre, per required inspection</u> <u>Hybrid rapeseed, canola and mustard \$7.00 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Sunflower</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u> <u>Hybrid sunflower \$7.00 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Turnip, Rutabaga, Kale</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>
<u>Woody Plants and Forbs</u>	<u>\$45 per field</u>	<u>N/A</u>	<u>\$3.90 per acre, per required inspection</u>	<u>\$139 fee per late application</u>	<u>hourly rate plus drive time and mileage</u>	<u>\$7 each document</u>

Crop	Application Fee	Seedling Field Inspection Fee	Seedling Producing or Field Inspection Fee	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Seed Shipped Out-of-State (uncleaned) Document Fee
Service Inspections excluding hybrid	\$45 per field	\$3.90 per acre, per required inspection	\$3.90 per acre, per required inspection	N/A	N/A	N/A
Annual and Rough Blue-grass Quarantine	\$45 per field	\$87.60 per acre plus time and mileage including travel time	\$87.60 per acre plus time and mileage including travel time	N/A	N/A	N/A

*1 One inspection is required for Great Northern, Red Mexican, pinto, pink, and small white bean.

*2 Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.

*3 Corn bin inspection billed at 45 minutes of the hourly rate per inspection.

(5) Crop acreage fee does not include required laboratory fees or tagging. Minimum tagging fee is \$17.00 per application. Tagging fees are specified in WAC 16-303-350. This does not include the shipping and handling charge for tags.

(6)(a) Crop hybrid pollen count:

(b) All crops except corn and hemp:

(i) \$67.42 per inspection if done at the time of the certification inspection.

(ii) \$187.00 per inspection is not conducted at the time of the certification inspection.

(7) No refund on rejected fields due to findings or results. To be eligible for a refund of the per acre fees, the seed crop application must be withdrawn prior to the field inspection.

(8) Seed stock class (foundation/prebasic, registered/basic) of all crops for certification \$32.50 per field plus per acre fee.

(9) Seedling field inspection and seedling producing or field inspection fee is \$90 minimum fee, per inspection.

(10) Seedling field inspection and seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.

(11) Late application penalty fee is based on scheduling and may also include travel time and mileage. After application due date, application may be rejected.

(12) Reinspection fee mileage will be charged at the current OFM mileage rate.

NEW SECTION

WAC 16-303-350 Seed tagging fees. (1) Seed tagging fees for certification, O.E.C.D., crucifer and specialty tags are as follows:

Certified Tags	
Card stock 4x3: Sod quality, Quality Timothy, Quality Orchard grass, Foundation, Registered, Certified, Experimental, Select, Source Identified	\$0.03/tag
Certified substandard class	\$0.13/tag
Certified adhesive 4x3	\$0.06/tag
Registered adhesive	\$0.09/tag
OECD Tags	
OECD 4x3 1st Gen tag	\$0.08/tag
OECD 4x3 Prebasic, Basic	\$0.31/tag
OECD 4-5/8 x 2-7/8 adhesive	\$0.08/label
Crucifer Tags	
1.5x1 Crucifer adhesive label	\$0.19/label
1x3 Crucifer adhesive label	\$0.19/label
4x1 Crucifer adhesive label	\$0.10/label
4x3 Crucifer card stock	\$0.13/tag
4x8 Crucifer adhesive label	\$0.10/label
4x8 Crucifer card stock	\$0.13/tag

Specialty Tags	
Zip tie and all other specialty tags	\$2.22 each

(2) Reissuance of certification tags requires an application fee of \$17.00 plus price of tags.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-303-317 Annual and rough bluegrass quarantine fees.

WSR 21-22-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed October 29, 2021, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-061.

Title of Rule and Other Identifying Information: Implements incarceration abatement and modification request/hearing notification service as enacted in SHB 2302 (chapter 227, Laws of 2020): WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-3900 Does DCS review my support order to see if it should be modified?, 388-14A-3901 Under what circumstances does DCS review a support order for modification?, 388-14A-3903 How does DCS decide whether to petition for modification of a support order?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-3935 What does DCS do with respect to abatement when it learns the noncustodial parent is an incarcerated parent?, 388-14A-3940 Who can ask to add abatement language to an administrative order?, 388-14A-3945 How does DCS administer abatement of an incarcerated person's child support order?, 388-14A-3950 What does DCS do to reinstate the support order when the NCP is released from confinement?, 388-14A-3955 What does DCS do when it determines an incarcerated person's support order should not be abated?, 388-14A-3960 What happens at a hearing on a notice regarding non-abatement of child support?, 388-14A-3965 What happens at a hearing on a notice of abatement?, 388-14A-3970 Who may request to terminate or reverse an abatement?, 388-14A-3975 What happens at a hearing to terminate or reverse an abatement?, and 388-14A-6100 The division of child support accepts oral requests for hearing or conference board.

Hearing Location(s): On December 21, 2021, 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 virtual. Due to the COVID-19 pandemic, hearings are being

held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than January 1, 2022.

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., December 21, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m., on December 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implements incarceration abatement and modification request/hearing notification service as enacted in SHB 2302 (chapter 227, Laws of 2020). Establishes the process by which qualifying incarcerated individuals have their child support obligations abated. Also clarifies under WAC 388-14A-3925 that the office of administrative hearings (OAH), not the division of child support (DCS), serves copies of requests for modification and notice of hearings.

Reasons Supporting Proposal: This rule making is required to implement SHB 2302 (chapter 227, Laws of 2020). It will ensure sufficient processes exist for incarceration abatement. It also ensures the correct entity, OAH, serves certain notices as required by law.

Statutory Authority for Adoption: RCW 26.09.916, 74.08.090, 74.20A.055.

Statute Being Implemented: RCW 26.09.170, 26.09.320, 26.09.325, 26.09.330, 26.09.335, 26.09.340, 74.20A.059.

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: Not applicable.

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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 rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are rules of DSHS 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.

Is exempt under RCW 19.85.025(4) and 34.05.328 (5)(b)(vii).

Explanation of exemptions: This proposal does not affect small businesses. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are concerning liability for care of dependents.

October 28, 2021
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Abatement" means the temporary reduction of child support obligations of an incarcerated person who is required to pay support.

"Absence of a court order" means that there is no court order either setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health care coverage which provides primary care services to the children with reasonable effort by the custodial parent.

"Accrued debt" means past-due child support which has not been paid.

"Acknowledged father" means a man who has established a father-child relationship by:

(1) Signing a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 prior to January 1, 2019;

(2) Signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019; or

(3) Signing a valid acknowledgment of paternity or parentage under another jurisdiction's laws.

"Acknowledged parent" means an individual who, after January 1, 2019, has established a parent-child relationship by signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. For the state of Washington, the Title IV-D provider is the division of child support (DCS) within the department of social and health services (DSHS).

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the fee charged on never-assistance cases based on the amount of collections between October 1 and September 30 each year, required by the Federal Deficit Reduction Act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state, tribe, or country for the birth of a child.

"Cash medical support" means a combination of:

(1) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but this amount is limited to no more than twenty-five percent of the obligated parent's basic support obligation; and

(2) A parent's proportionate share of uninsured medical expenses.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

"Child," for the purposes of this chapter, means:

(a) An individual for whom a child support obligation is being established or enforced; or

(b) A dependent child as defined in RCW 74.20A.020 (3); and

(c) Unless the context or the facts of a particular case clearly requires otherwise, "child" may be used interchangeably with the term "children."

"Children," for the purpose of this chapter, means more than one child, unless the context or the facts of a particular case clearly requires the term to refer to only one child.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Controlling order" means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 U.S.C. 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 U.S.C. 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, or a court of comparable jurisdiction of an Indian tribe or another state or country.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Determination of parentage" means the establishment of the parent-child relationship by:

(1) A judicial proceeding;

(2) The signing of a valid acknowledgment of paternity under:

(a) RCW 26.26.300 through 26.26.375 prior to January 1, 2019; or

(b) Another jurisdiction's laws dealing with the acknowledgment or affidavit of paternity or the acknowledgment of parentage; or

(3) The signing of a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Benefits under the family and medical leave insurance program under Title 50A RCW;

(7) Gains from capital, labor, or a combination of the two; and

(8) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or one or more children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child or children, and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the department of children, youth, and families (DCYF).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health care coverage" means fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child or children. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

"Health insurance" or **"health insurance coverage"** is included in the definition of "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Incarcerated person" for purposes of abatement means a person who is totally or partially confined in a jail, prison, or correctional facility for at least six months or is serving a sentence of at least six months in a jail, prison, or correctional facility.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Initiating agency" or "initiating jurisdiction" means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and children that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF. This term includes public health care coverage, which is called apple health in Washington state.

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.18, 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental, orthodontic, and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" consists of:

- (1) Health care coverage, which may be health insurance coverage or public health care coverage; and
- (2) Cash medical support, which consists of:
 - (a) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate

share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(b) A parent's proportionate share of uninsured medical expenses.

"Monthly payment toward the premium" means a parent's contribution toward premiums paid for coverage provided by a public entity or by another parent, which is based on the obligated parent's proportionate share of the premium paid, but is limited to no more than twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or "NMSN" is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity or parentage, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

"Obligated parent" means a parent who is required under a child support order to provide medical support, which could include health care coverage or to reimburse the other parent for his or her share of uninsured medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Parent" means an individual who has established a parent-child relationship under:

- (1) RCW 26.26.101 prior to January 1, 2019;
- (2) RCW 26.26A.100 on or after January 1, 2019; or
- (3) Under the laws of another jurisdiction.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to

recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 U.S.C. 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Premium" means the amount paid for coverage provided by a public entity or by another parent for a child covered by a child support order. This term may also mean "cost of coverage."

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" is a term used in this chapter to refer to accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include public health care coverage provided by the state.

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Public health care coverage," sometimes called "state purchased health care," means state-financed or federally financed medical coverage, whether or not there is an assignment of rights. For children residing in Washington state, public health care coverage is called apple health; this includes coverage through the department of social and health services or the health care authority, except for coverage under chapter 41.05 RCW. For children residing outside of Washington, this includes coverage through another state's agencies that administer state purchased health care programs.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responding agency" or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support," depending on the context in which it is used, can mean one of the following:

(1) An amount paid directly to the custodial parent by the noncustodial parent during a time when there is an open TANF grant, which the custodial parent does not immediately report or turn over to the department;

(2) A debt owed to the division of child support by anyone other than a noncustodial parent; or

(3) Amounts collected and retained by the division of child support which are applied to current or past due child support obligations which have been assigned to the state.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Self-support reserve" or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of a court of comparable jurisdiction in an Indian tribe or another state or country.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, reimbursement for uninsured medical expenses, health care coverage, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health care coverage, uninsured medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both. For purposes of abatement under this chapter, a support order includes the child support obligation and the obligations based on the terms of the basic child support order, such as those determined by notices of support owed.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy

families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-D agency" or "IV-D agency" means the agency responsible for carrying out the Title IV-D plan in a state or tribe. For the state of Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses," for the purpose of establishing or enforcing support obligations, means:

- (1) Medical expenses not paid by insurance for medical, dental, orthodontic, prescription, and optometrical costs incurred on behalf of a child; and
- (2) Premiums, copayments, or deductibles incurred on behalf of a child.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"**Washington State Support Registry**" or "**WSSR**" is the entity created under RCW 26.23.030 within the division of child support (DCS) which, among other duties, contains a central unit for the collection, accounting and disbursement of support payments.

"**We**" means the division of child support, part of the department of social and health services of the state of Washington.

"**You**" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) A support order entered by a superior court may only be modified by a superior court or a court of comparable jurisdiction of an Indian tribe or another state or country. The Uniform Interstate Family Support Act (UIFSA, adopted in Washington as chapter 26.21A RCW) determines which state, tribe or country may modify the order.

(2) If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(3) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(4) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925. Acting as a responding jurisdiction, DCS may petition to modify an administrative order at the request of the initiating jurisdiction.

(5) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

(6) Child support orders may be changed under WAC 388-14A-3940 to include abatement language for purposes of abatement as required by this chapter.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3900 Does DCS review my support order to see if it should be modified? (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

(a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or

(b) Evaluate an intergovernmental case to determine whether to refer the case to an Indian tribe or another state or country for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification? (1) The division of child support (DCS) reviews child support orders under WAC 388-14A-3900 when DCS has enough locate information to obtain personal service on both parties to the order; and:

(a) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

- (i) DCS last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered; or

(b) A party to the order, the IV-D agency of a tribe or another state, or the central authority of another country, submits a request for review to DCS and thirty-five months have passed since:

- (i) DCS or another state or tribe's IV-D agency last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered.

(2) DCS may refer a request for review to another state or tribe's IV-D agency for action.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940. A review under this subsection does not impact reviews conducted under subsections (1) or (2) of this section.

AMENDATORY SECTION (Amending WSR 20-04-032, filed 1/28/20, effective 2/28/20)

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

(a) The proposed change in child support based on the Washington state child support schedule:

- (i) Is at least fifteen percent above or below the current support obligation;
- (ii) Is at least one hundred dollars per month above or below the current support obligation; and
- (iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or
- (iv) Will provide enough income to:

(A) Make the family ineligible for public assistance if the noncustodial parent (NCP) pays the full amount due under the proposed order; or

(B) Allow a family, otherwise eligible for public assistance, to remain off of assistance.

(b) The case meets the legal requirements for modification under RCW 26.09.170, 74.20A.059, or WAC 388-14A-3925.

(2) DCS may petition to modify the order without regard to subsection (1)(a)(i) of this section if the reason DCS reviewed the order is the noncustodial parent's incarceration.

(3) DCS may petition to modify the order without regard to subsection (1)(a) of this section when:

- (a) The order does not require the NCP to provide health insurance coverage for the children; and
- (b) Health insurance coverage is available through the NCP's employer or union at a reasonable cost; or
- (c) Both parties agree to an order modifying the support amount; or
- (d) DCS learns that an NCP is incarcerated and qualifies for abatement under this chapter and the child support order does not include abatement language.

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

- (a) Any circumstances that have changed;
 - (b) Any relief requested; and
 - (c) The proposed new support amount.
- (2) The petitioning party must file the request for modification with DCS.
- (3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.
- (4) ~~((DCS))~~ Office of Administrative Hearings serves a copy of the request for modification and notice of hearing on all other parties by ~~((first class))~~ regular mail at their last known address ~~((last known to DCS))~~.
- (5) ~~DCS((;)) or the administrative law judge (ALJ)((-or the department review judge))~~:
- (a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and
 - (b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.
 - (6) A request to add a requirement for the custodial parent (CP) to provide health care coverage, or to add a provision in the order to include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.
 - (7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.
 - (8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.
 - (9) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:
 - (a) Dismiss the petition; or
 - (b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.
 - (10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made,

or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

(11) For purposes of abatement under this chapter, DCS, the CP, or the NCP may seek changes to a child support order to add abatement language under WAC 388-14A-3940.

NEW SECTION

WAC 388-14A-3935 What does DCS do with respect to abatement when it learns the noncustodial parent is an incarcerated parent? (1) If the child support order contains abatement language, the division of child support (DCS) administers the abatement under WAC 388-14A-3945.

(2) If the child support order was entered in Washington state and does not contain abatement language, DCS refers the child support order to the appropriate tribunal for the limited purpose of adding abatement language under WAC 388-14A-3940, except as provided in subsection (3) of this section.

(3) DCS may review for modification under WAC 388-14A-3901 when the child support order does not contain abatement language and the department is paying public assistance for the child or children.

NEW SECTION

WAC 388-14A-3940 Who can ask to add abatement language to an administrative support order? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may file a petition and request a hearing under chapter 26.09 RCW for the limited purpose of adding abatement language to an administrative order for child support.

(2) The petitioning party must submit the request to add abatement language to DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition for the limited purposes of adding abatement language to an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.

(4) OAH serves a copy of the request to add abatement language and notice of hearing on all other parties by regular mail at their last known address.

(5) A hearing under this section:

(a) Is for the limited purpose of determining whether statutorily required abatement language under RCW 26.09-335 should be added to the administrative support order;

(b) Is separate from the administration of the abatement by DCS under WAC 388-14A-3945;

(c) Does not otherwise modify or adjust the administrative support order; and

(d) Does not impact DCS's or any party's right to request a prospective modification of the administrative support order under WAC 388-14A-3925.

(e) Does not impact when DCS reviews a support order for modification under WAC 388-14A-3901.

(6) DCS may enter into an agreed settlement or consent order with the parties under WAC 388-14A-3600 to add abatement language to an administrative support order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order against that party.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition.

NEW SECTION

WAC 388-14A-3945 How does DCS administer abatement of an incarcerated person's child support order? (1) The division of child support (DCS) abates a non-custodial parent's (NCP's) child support order under this chapter when it learns that the NCP is an incarcerated person and all of the following are true:

(a) The NCP is incarcerated for or begins serving a sentence of at least six months in confinement;

(b) The child support order contains abatement language; and

(c) DCS has reviewed its records and determines the NCP has no access to or possession of income or assets to pay child support while incarcerated.

(2) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets to pay child support while incarcerated. DCS may assert it has rebutted the presumption. See WAC 388-14A-3955.

(3) When the requirements of subsection (1) of this section are met, the child support order is abated to ten dollars per month without regard to the number of children covered by that order.

(4) The first month support is abated is the date the NCP became confined or February 1, 2021, whichever is later.

(5) The abatement ends on the last day of the third full month following the NCP's release from confinement, unless an order entered in the court or administrative forum specifies a different date.

(6) DCS sends a notice of abatement to notify the custodial parent (CP) by regular mail to their last known address, with a copy to the NCP, that the abatement has been applied.

(7) If the CP disagrees with the notice of abatement, the CP may:

(a) Request a timely hearing within twenty days of the date of the notice of abatement (see WAC 388-14A-3965);

(b) Request an untimely hearing within one year of the date of the notice of abatement (see WAC 388-14A-3965); or

(c) Request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3970).

(8) If the NCP disagrees with the notice of abatement, the NCP may request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3960).

(9) If the abatement results in an overpayment by the NCP:

(a) Neither DCS nor the CP is required to refund any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration; and

(b) The NCP is not entitled to a refund of any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration.

(10) Abatement of a child support obligation of an incarcerated person does not constitute modification or adjustment of the order.

NEW SECTION

WAC 388-14A-3950 What does DCS do to reinstate the support order when the NCP is released from confinement? (1) Unless otherwise specified in a court or administrative order, the support order is automatically reinstated as follows:

(a) Effective the first day of the fourth full month after the NCP is released from confinement, support is reinstated at fifty percent of the support amount provided in the underlying order, but not less than the presumed minimum obligation of \$50 per month per child; and

(b) Effective one year after release from confinement, support is reinstated at one hundred percent of the support amount provided in the underlying order.

(2) DCS informs the parties in writing at their last known address when reinstating support at fifty percent and one hundred percent.

(3) If the support order is modified under RCW 26.09.-170 or RCW 74.20A.059 during the period of abatement, this provision regarding reinstatement of support at fifty percent in subsection (1) of this section does not apply. DCS enforces the modified support obligation.

NEW SECTION

WAC 388-14A-3955 What does DCS do when it determines an incarcerated person's support order should not be abated? (1) If DCS reviews its records and determines the NCP has access to or possession of income or assets to pay child support while incarcerated, DCS sends a notice regarding non-abatement of child support, sometimes called the notice regarding non-abatement, to the NCP and a copy to the custodial parent (CP).

(a) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets available to pay child support while incarcerated.

(b) The notice regarding non-abatement includes the reason or reasons DCS believes it has rebutted the presumption that the NCP is unable to pay their child support obligation while incarcerated.

(2) The parties may request an adjudicative proceeding if they disagree with the notice regarding non-abatement.

(a) The parties may request a timely hearing within twenty days of the date of the notice regarding non-abatement.

(b) The parties may request an untimely hearing within one year of the date of the notice regarding non-abatement.

(c) The parties may request a late hearing one year or more after the after the date of the notice regarding non-abatement but must demonstrate good cause.

(3) For purposes of this chapter, correctional industries compensation does not count as income or assets to pay child support.

NEW SECTION

WAC 388-14A-3960 What happens at a hearing on a notice regarding non-abatement of child support? (1) The noncustodial parent (NCP) or custodial parent (CP) may request a hearing on a notice regarding non-abatement of

child support, sometimes called the notice regarding non-abatement.

(2) The purpose of the hearing is for the administrative law judge (ALJ) to determine whether DCS's notice is upheld or dismissed.

(3) The ALJ must allow DCS to orally amend the notice regarding non-abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding DCS's determination that support should not be abated because the NCP has access to or possession of income or assets to pay child support while incarcerated; or

(b) Dismissing the notice regarding non-abatement because the NCP does not have access to or possession of income or assets to pay child support while incarcerated.

(5) If the order says child support should be abated, DCS abates and sends a notice of abatement to the parties. See WAC 388-14A-3940.

NEW SECTION

WAC 388-14A-3965 What happens at a hearing on a notice of abatement? (1) The custodial parent (CP) has the burden of proof to demonstrate to the administrative law judge (ALJ) that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(2) Any party to the hearing may show good cause why the abatement should end and support reinstate at a date other than what is specified in WAC 388-14A-3945.

(3) The ALJ must allow DCS to orally amend the notice of abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding the notice of abatement;

(b) Upholding the notice of abatement and, upon a finding of good cause, specifying the date abatement ends; or

(c) Dismissing the notice of abatement because the objecting party met the burden of proof to show that NCP has access to or possession of income or assets to pay child support while incarcerated.

NEW SECTION

WAC 388-14A-3970 Who may request to terminate or reverse an abatement? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may submit a request to terminate or reverse an abatement at any time during the period of abatement. The request must be in writing.

(a) If DCS or the CP is the requesting party, they must include documents or other evidence demonstrating that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(b) If the NCP is the requesting party, no supporting documents are required.

(2) The requesting party must file the request to terminate or reverse the abatement with DCS or the office of administrative hearings (OAH).

(3) Acting as a responding jurisdiction, DCS may file a request to terminate or reverse an abatement on behalf of an initiating jurisdiction in an intergovernmental case.

NEW SECTION

WAC 388-14A-3975 What happens at a hearing to terminate or reverse an abatement? (1) If the requesting party was required to submit supporting documents and did not do so, any other party may file a motion to dismiss. The requesting party may ask for a continuance to provide supporting documents.

(2) If the hearing is dismissed because supporting documents were not submitted, the requesting party may file a petition to vacate the dismissal.

(3) If a hearing is held, the ALJ may reverse the abatement or terminate the abatement on a specific date upon a finding that the NCP has access to or possession of assets or income to provide support while incarcerated.

(4) If the requesting party fails to appear after being sent a notice of hearing, the request must be dismissed.

(5) Depending on the type of evidence provided at the hearing, the ALJ may order that the abatement of the support order be:

(a) Reversed, meaning that the determination that support should be abated is vacated and all amounts owed under the support order are reinstated; or

(b) Terminated, meaning that the abatement of support ends as of the date specified in the order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsections (8) and (9), the division of child support (DCS) accepts either a written or an oral request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

(5) The effective date of an oral request for hearing is the date that someone makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the later of the date of the complete oral request for hearing or the date that DCS receives the written authorization.

(8) There are (~~two~~) three types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; (~~and~~)

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300; and

(c) A request to terminate or reverse an abatement under WAC 388-14A-3960.

(9) You must also make the following requests in writing:

(a) A request for a determination of controlling order under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, as described in WAC 388-14A-7305; and

(b) An objection to the determination of controlling order contained in a notice of support debt and registration issued by DCS under WAC 388-14A-7325. WAC 388-14A-7335 describes how to make this objection.

WSR 21-23-010

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 4, 2021, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-093.

Title of Rule and Other Identifying Information: WAC 388-829C-131 How does DDA determine the daily rate? and 388-829C-135 What requirements must a behavior support plan meet?

Hearing Location(s): On December 21, 2021, 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; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most recent information.

Date of Intended Adoption: Not earlier than December 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 21, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on December 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmen-

tal disabilities administration (DDA) is amending this rule to remove the daily rate multiplier from rule, to remove the DSHS 10-234 requirement, and to establish requirements for clients who require a positive behavior support plan and receive services from a companion home provider.

Reasons Supporting Proposal: DDA removed the multiplier because it changes too frequently for the permanent rule to remain accurate. Instead of codifying the multiplier in rule, DDA will publish companion home provider rates on the office of rates management's website under developmental disabilities rates.

Typically, DSHS 10-234 was only completed at the time of a client's referral to a companion home. Removing the requirement that a client have a challenging behavior documented on form DSHS 10-234 will allow providers supporting a client who develops a need for behavior support after referral to potentially become eligible for a higher rate.

DDA added behavior support plan requirements to align with those established in DDA policy.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310; Implementation and Enforcement: Olga Lutsyk, P.O. Box 45310, Olympia, WA 98504-5310.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.030, does not impose any new costs.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses. No costs will be imposed because companion home providers are already required by policy and contract to meet the behavior support plan requirements in new WAC 388-829C-135. (Companion home providers are in the scope of DDA Policy 5.21, Functional Assessments and Positive Behavior Support Plans. Companion home provider contracts also require providers to follow DDA Policy 5.21.)

If a companion home provider finds that a client's behavior support plan does not meet requirements of WAC 388-829C-135, the provider can request assistance from DDA psychology associates. This technical assistance should mitigate any costs a provider might incur in order to update a client's behavior support plan.

November 3, 2021
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-13-091, filed 6/16/20, effective 7/17/20)

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate ~~((equals the sum of))~~ is based on the client's ~~((support))~~ DDA assessment ~~((scale scores multiplied by 14.2))~~ under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

~~((2))~~ ~~((The residential algorithm under chapter 388-828 WAC determines the level of services and supports a companion home client may receive.~~

~~((3))~~ The ~~((CARE))~~ following support assessment ~~((assigns))~~ scales are used to calculate a companion home daily rate. Each support ~~((levels))~~ assessment scale is assigned an acuity level of "none," "low," "medium," or "high" ~~((to each support))~~ by the DDA assessment ~~((scale that correspond))~~ algorithm and corresponds to the values below:

((Category)) Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

~~((4))~~ (3) DDA assigns a behavior score of four if ~~((the client has a))~~:

(a) The client has an acuity level of "high" for behavior ~~((score of three))~~ on the support assessment scale; and

~~((b))~~ ~~((Challenging behavior documented on form DSHS 10-234; and~~

~~((c))~~ ~~((Current positive))~~ The client has a behavior support plan that meets requirements under WAC 388-829C-135.

(4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.

~~((5))~~ ~~((DDA reviews a))~~ DSHS publishes companion home daily rate ~~((annually and if a significant change assessment occurs during the plan year))~~ on the office of rates management's website.

(6) DDA may adjust a companion home daily rate if:

~~((a))~~ ~~((Any of))~~ The sum of the client's support assessment ~~((scale))~~ acuity levels ~~((change))~~ changes; or

~~((b))~~ ~~((The multiplier changes due to a vendor rate change; or~~

~~((c))~~ ~~((The annual cost of respite services increased because))~~ DDA ~~((approved))~~ approves additional respite hours under WAC 388-829C-234(3) ~~((and the client's assessed support needs remain unchanged since the most recent CARE assessment))~~.

NEW SECTION

WAC 388-829C-135 What requirements must a behavior support plan meet? (1) A client's behavior support plan must:

- (a) Be based on a functional assessment; and
- (b) Describe:
 - (i) The target behavior;
 - (ii) Actions that may be taken to prevent the target behavior;
 - (iii) Actions that may be taken in response to the target behavior;
 - (iv) Actions that may be taken if the target behavior increases in frequency, duration, intensity, or impact;
 - (v) The replacement behavior that matches the target behavior's function;
 - (vi) How to teach the replacement behavior;
 - (vii) How to respond to the replacement behavior; and
 - (viii) Benchmarks to evaluate the behavior support plan's effectiveness.

(2) If the client has a behavior support plan, the provider must collect data on:

- (a) The target behavior's:
 - (i) Frequency;
 - (ii) Intensity;
 - (iii) Duration; and
 - (iv) Impact;
- (b) The replacement behavior's:
 - (i) Frequency;
 - (ii) Intensity;
 - (iii) Duration; and
 - (iv) Impact.

(3) The provider must analyze the data collected under subsection (2) of this section at least every six months to determine the effectiveness of the behavior support plan.

(4) If the analysis under subsection (3) of this section indicates the target behavior is not decreasing in frequency, intensity, duration, or impact, the provider must:

- (a) Revise the behavior support plan; or
- (b) Document the reason revising the support plan is not indicated.

WSR 21-23-013
PROPOSED RULES
BOARD OF ACCOUNTANCY
 [Filed November 4, 2021, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-048.

Title of Rule and Other Identifying Information: WAC 4-30-028 What rules govern the proceedings before the board?

Hearing Location(s): On January 28, 2022, at 9:00 a.m., Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 28, 2022.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 26, 2022.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by January 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-028 to reformat the title, add a[n] RCW reference, remove an outdated section, and add a board decision to which this rule applies so that the process is more efficient.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Trujillo, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-664-9268.

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 board of accountancy is not a listed agency in RCW 34.05.328 (5)(a)(i).

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. No additional costs are associated with these changes.

November 4, 2021
David Trujillo, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-028 (~~What rules govern the~~) Rules governing the formal adjudicative proceedings and the brief adjudicative proceedings before the board(~~(?)~~). Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, (~~practice and procedure~~) adjudicative proceedings in and before the board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

- (1) (~~Staff~~) Denials of initial individual license applications, renewals, or applications for reinstatement;
- (2) (~~Staff~~) Denials of CPA-Inactive certificate renewals or applications for reinstatement;
- (3) (~~Staff denials of practice privilege reinstatements;~~
- (4) (~~Staff~~) Denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

(~~(5) Staff~~) (4) Denials of initial firm license applications, renewals, and amendments;

(~~(6) Staff~~) (5) Denials of exam applications; (~~and (7)~~) (6) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship; and

(7) Lifts of stays of suspension from a board order.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within (~~(thirty)~~) 30 days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for brief adjudicative proceedings. The presiding officer renders a decision either upholding or overturning the denial. This decision, called an order, will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within (~~(twenty-one)~~) 21 days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice chair's, or designee's, decision, also called an order, will be provided to you at the last address you furnished to the board.

WSR 21-23-031
WITHDRAWAL OF PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
(By the Code Reviser's Office)
[Filed November 8, 2021, 9:31 a.m.]

WAC 392-140-60105, proposed by the superintendent of public instruction in WSR 21-09-088, appearing in issue 21-09 of the Washington State Register, which was distributed on May 5, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 21-23-045
PROPOSED RULES
GREEN RIVER COLLEGE
[Filed November 9, 2021, 8:42 p.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 21-19-028.

Title of Rule and Other Identifying Information: Green River College, student code of conduct.

Hearing Location(s): On December 21, 2021, at 3 p.m., Zoom, <https://us02web.zoom.us/j/83760229368>, Meeting ID 837 6022 9368, Passcode 449211.

Date of Intended Adoption: January 20, 2022.

Submit Written Comments to: Godfrey Drake, 12401 S.E. 320th Street, email gdrake@greenriver.edu, by December 21, 2021.

Assistance for Persons with Disabilities: Contact Jamie Hatleburg, phone 253-833-9111 ext. 3484, email JHatleberg@greenriver.edu, by December 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Both of these rule chapters are being repealed because they are not required to be codified regulations in WAC.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Green River College, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Godfrey Drake, director of judicial affairs, 253-833-9111; Enforcement: George Frasier, vice president of college advancement, 253-833-9111.

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 rules being repealed don't affect the college financially.

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. [No information supplied by agency.]

November 10, 2021

George P. Frasier

Vice President of

College Advancement

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132J-160-010	Purpose.
WAC 132J-160-020	Definitions.
WAC 132J-160-030	Scope of tuition and special course/program connected fees refund policies.
WAC 132J-160-045	Tuition and special course/program-connected fees withdrawal or reduction in class load refund policy.
WAC 132J-160-050	Appeal.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132J-164-010	Purpose of the Buckley Family Educational Rights and Privacy Act policy for Green River College.
WAC 132J-164-020	Definitions.
WAC 132J-164-030	Informing parents of students and eligible students of their rights.
WAC 132J-164-040	Procedures for parents and eligible students to request or inspect personal records or to release their personal records to designated persons.
WAC 132J-164-050	Students waiving right to review records.
WAC 132J-164-060	Appeal of accuracy of records.
WAC 132J-164-070	Use of student records.
WAC 132J-164-080	Exclusion.

WSR 21-23-080

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 16, 2021, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-104.

Title of Rule and Other Identifying Information: Proposed changes to WAC 296-46B-995, Electrical board—Appeal rights and hearings.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) by visiting https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDk4ZDMyNzUtYmQxNC00MTQyLWlyZmUtZjYxNGJlY2JkNTg3%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d; or calling (audio only) 1-253-372-2181, Phone Conference ID 495 867 492# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: March 1, 2022.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on January 6, 2021.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by December 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose amendments to the electrical rules governing the electrical board, appeals and the appeals process under WAC 296-46B-995. The rules governing appeals and the appeal process before the electrical board are

confusing and out of date. L&I accepted a petition for rule making from the state's electrical board to amend the rules for the purposes of clarifying, simplifying, and making the procedures for appeals to the board easier to understand and navigate. This rule making is necessary to propose amendments requested by the petitioner so the rules are up-to-date and clear for those that appeal decisions to the board. The proposed amendments will:

- Modify the procedural requirements for the electrical board and electrical board meetings;
- Modify the appeal and hearing requirements for matters to the board; and
- Modify rules for general housekeeping, such as punctuation, typographical and reference corrections, formatting, reorganizing and relocating requirements, removal of obsolete language, etc.

Reasons Supporting Proposal: This rule making is in response to a petition for rule making. The rule changes are necessary to ensure the rules are clear, easier to understand, and navigate for persons appealing decisions to the board.

Statutory Authority for Adoption: Chapter 19.28 RCW; RCW 19.28.031, 19.28.251.

Statute Being Implemented: Chapter 19.28 RCW; RCW 19.28.031, 19.28.251.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Wayne Molesworth, Program Manager, Tumwater, Washington, 360-480-5673; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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 is exempt from the economic analysis requirement by meeting the following exemption criteria listed in RCW 34.05.328 (5)(b) including:

- Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
- Rules 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; and
- Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 16, 2021

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

WAC 296-46B-995 Electrical board—Appeal rights and hearings.

General.

(1) ~~((Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board.))~~ Electrical board.

~~((a))~~ (a) Except as provided in chapters 19.28 and 42.30 RCW, Open Public Meetings Act, and this chapter, all proceedings will be conducted according to chapter 34.05 RCW, Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. ~~((See chapter 34.05 RCW, Administrative Procedure Act for specific definitions not described in this chapter.~~

~~((2))~~ (b) See RCW 19.28.311 for the composition of the electrical board.

~~((3))~~ (c) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised*."

~~((4))~~ (d) The board ~~((will))~~ holds regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311. Board meetings may be scheduled in a variety of geographic locations in Washington.

~~((5))~~ (e) All hearings before the board will be held on regularly scheduled meeting dates unless the board determines that an alternate date is necessary.

~~((6))~~ (f) The ~~((director or the))~~ chairperson or a majority of the members of the board may call ~~((a))~~ special meetings ~~((at any time))~~ as provided in RCW 42.30.080.

~~((6))~~ (g) Each board member ~~((must))~~ will be notified ~~((in writing))~~ of the agenda, date, time, and place of each regular and special meeting ~~((-"Writing" includes by electronic mail, also known as "email," if the member has provided an email address for such notice))~~.

~~((7)) (h) The board ((or department)) may elect to have ((an appeal heard by the office of administrative hearings either tape)) board meetings recorded or transcribed by a court reporter(, and the board may so elect regarding hearings or board reviews heard by the board as a whole).~~

~~((8)) (i) A majority of the board constitutes a quorum for purposes of rendering any decision.~~

~~((a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.~~

~~(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.~~

~~(c) If the board selects the method in (b) of this subsection, at the time of the hearing, the board will set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in (b) and (c) of this subsection may occur by U.S. mail, facsimile or by electronic mail and will be determined by the board at the hearing; the members' votes will be public record.~~

~~(9)) (j) Board members may attend meetings in person, via electronic means, or by telephone.~~

~~(k) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board((, 7273 Linderson Way)) as follows:~~

~~By mail: Department of Labor and Industries, P.O. Box 44460, Olympia, WA 98504-4460. ((Twenty copies of filings and documents must))~~

~~By personal delivery: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501.~~

~~Documents may be submitted by ordinary mail, certified or registered mail, ((or by)) personal delivery((. Filings and documents must be received no later than forty five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.~~

~~(10) All hearings before the board as a whole will be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.~~

~~(11) All notices of appeal, with a certified check payable to the department in the amount specified in subsection (12), (15), (16), or (18) of this section if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty five days before the regularly scheduled board meeting at which the hearing would occur. A separate appeal fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5)(a) — Designated administrator not available, RCW 19.28.061 (5)(d) — Designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5)(e) — Designated administrator fails to ensure corrections are made would require three of the applicable appeal amounts; one for each specific violation type). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars max-~~

imum for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs, testimony, or documents for the board's consideration at least forty five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting), or in an electronic manner acceptable to the department.

(1) Except for original appeal documents and notices of appeal from decisions of either the office of administrative hearings or a city or town, any documents a party wants the board to consider at the hearing must be filed with the chief electrical inspector, as secretary to the board, by the dates specified in the notice of hearing letter. Documents submitted after the deadlines may be excluded at the discretion of the board chair as presiding officer in accordance with WAC 10-08-140 (2)(b).

Appeals

~~((12) Appeals of penalties issued by the department.))~~

(2) General appeal requirements.

(a) A party may appeal ((a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal will be assigned to the office of administrative hearings)) the following matters pursuant to chapter 19.28 RCW to the board: Penalties issued by the department, proposed decisions by the office of administrative hearings, suspension, revocation, or nonrenewals, disputes relating to department interpretation per RCW 19.28.111, 19.28.480, or 19.28.531, appeals of a continuing or basic trainee class or instructor for denials or revocations per WAC 296-46B-970, appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation, and penalty decisions issued through an appellate process of a city or town.

(b) The appeal must be filed within twenty days after ((the notice)) service of the decision ((or penalty is given to the assessed party either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party)) and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department. The appeal fee for penalties must be in the sum of two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars. A separate appeal fee is required for each violation type with a maximum of one thousand dollars for all violation types. The appeal fee for all other appeals is two hundred dollars unless specified otherwise.

(c) The issues on appeal must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only. Appeals must identify the contentions of the appellant, and if applicable, must specify to which conclusions of law and findings of fact the party takes exception.

(d) The parties to the appeal will be notified of the date, time, and location of the appeal hearing by letter from the chief electrical inspector, as secretary to the board. The notice

letter may also include deadlines for filing memorandums of authorities, prehearing conference or other matters necessary for the smooth adjudication of the appeal. Failure to comply with the deadlines outlined in the notice of hearing letter may result in exclusion of the documents. If a party is unable to attend the scheduled hearing due to the geographic location of the meeting, they must immediately notify the chief electrical inspector, as secretary to the board. The appeal may also be rescheduled for good cause shown.

(e) Requests to reschedule a hearing date must be in writing and made at least thirty days prior to the scheduled meeting at which the appeal is to be heard. The chairperson to the board, as the presiding officer, may grant or deny the request based on the needs of the parties.

(f) If either party intends to file a dispositive motion, they must notify the chief electrical inspector, as secretary to the board, no later than forty-five days prior to the scheduled hearing. The secretary will consult with the presiding officer to determine a briefing schedule so that the motion can be ruled upon at least fourteen days prior to the meeting at which the appeal is scheduled to be heard.

(g) Appeals received at least sixty days before the next regularly scheduled board meeting will be heard at that meeting. When an appeal is received less than sixty days prior to the next regularly scheduled board meeting, the appeal will be scheduled for the following regularly scheduled board meeting.

(h) The board may elect to have the assistance of an administrative law judge in any proceeding.

(3) Appeals of penalties issued by the department.

(a) Appeals will be assigned to the office of administrative hearings who will conduct the hearing pursuant to chapter 34.05 RCW and issue a proposed decision and order.

(b) In all appeals of penalties issued by the department, the department has the burden of proof by a preponderance of the evidence.

~~((13))~~ (4) Appeals of proposed decisions issued by the office of administrative hearings.

~~((A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(14) Appeals of penalty decisions issued through an appellant process of a city or town.~~

~~(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal must be received in the office of the chief electrical inspector, as secretary to the board, at least~~

~~forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(15)) In all appeals of decision issued by the office of administrative hearings, the party aggrieved by the decision has the burden of proof by a preponderance of the evidence.~~

~~(b) All appeals of decisions issued by the office of administrative hearings will be based on the record of the hearing and conducted pursuant to chapter 34.05 RCW.~~

~~(c) If neither party timely appeals a proposed decision issued by the office of administrative hearings, the proposed decision and order shall become the final order of the board.~~

~~(5) Appeals of suspension, revocation, or nonrenewal. ((a)) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.~~

~~((b) The appeal must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars or, for appeals of nonrenewal due to outstanding final judgments owed to the department, the amount shall be two hundred dollars or ten percent of the outstanding penalty amount, whichever is less, but in no event less than one hundred dollars.~~

~~(16))~~ (6) Appeals of decisions on installation.

~~(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. ((The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.~~

~~(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs, testimony, or documents for the board's consideration at least twenty days prior to the scheduled hearing.~~

~~(17))~~ The request for review must be filed with the office of the chief electrical inspector, as secretary to the board, within twenty days after the department issues its written interpretation.

(b) Appeals according to this section must specify why the department's interpretation or application of the installation or maintenance standards is in error.

(7) Appeals of a continuing or basic trainee class, course sponsor, or instructor for denials, suspensions, or revocations.

(a) A party may ((~~appeal a decision issued by the department, pursuant to~~) request a review of a decision of denial or modification of an application for a class or instructor issued by the department under WAC 296-46B-970 (3)(e)(iv) ((~~to the superior court per RCW 34.05.542(3)~~)). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the denial or modification. The request must include the review fee specified in WAC 296-46B-970 (3)(e)(iv). The review fee is nonrefundable.

(b) A party may appeal a suspension or revocation of a course sponsor or instructor by the department under WAC 296-46B-970 (8)(a). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the suspension or revocation.

~~((18))~~ (8) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

~~((a))~~ A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

~~((b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~((19))~~ (9) Appeals of penalty decisions issued through an appellate process of a city or town.

(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision issued by a city or town and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) All appeals of decisions issued by a city or town will be based on the record of the hearing at the city or town and conducted pursuant to chapter 34.05 RCW.

(c) The appeal procedures will be the same as those for appeals of proposed decisions issued by the office of administrative hearings.

(d) The city or town will reimburse the department for all costs of an appeal.

(10) Judicial review of final decisions of the board.

(a) A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be ~~((done))~~ made in accordance with chapter 34.05 RCW.

~~((20) If appeal(s) according to this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.~~

~~(21) Appeals—General requirements—~~

~~(a) Appeals according to this section must specify the contentions of the appellant, and must for subsection (13) or (14) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board will not grant a hearing de novo.~~

~~(b) In appeals under subsections (13), (14), (15), (16), and (17) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.~~

~~(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.~~

~~(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.)~~ (b) A party may seek judicial review within thirty days of department decisions not specified above in accordance with RCW 34.05.570(4).

Appearance and practice before board.

~~((22))~~ (11) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

~~((23))~~ (12) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

WSR 21-23-081

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 16, 2021, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-127.

Title of Rule and Other Identifying Information: Pension discount rate. Amending WAC 296-14-8810 Pension tables, pension discount rate and mortality tables in chapter 296-14 WAC, Industrial Insurance.

Hearing Location(s): On January 6, 2022, at 1:00 p.m., Zoom hearing. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; join by phone +1 253-215-8782 US (Tacoma), find your local number <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>.

Date of Intended Adoption: February 15, 2022.

Submit Written Comments to: Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 6, 2022, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Oberst, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email ashley.oberst@lni.wa.gov, by December 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured and state fund pensions. The PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule proposes to lower the PDR for self-insured employers from 5.8 percent to 5.7 percent, and state fund employers from 4.5 percent to 4.0 percent, effective April 1, 2022.

Reasons Supporting Proposal: These reductions allow our financial statements to more accurately reflect our liabilities and overall financial position, and are consistent with recommendations from our annual independent actuarial review of our rate making.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: Department of labor and industries (L&I), governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees or rates pursuant to legislative standards.

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

November 16, 2021
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 21-02-066, filed 1/5/21, effective 4/1/21)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;
- (iii) A pension discount rate of (~~(4.5)~~) 4.0 percent for state fund pensions;
- (iv) A pension discount rate of (~~(5.8)~~) 5.7 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 21-23-089
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 16, 2021, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-099.

Title of Rule and Other Identifying Information: Chapter 296-910 WAC, Small employer emergency safety grant program.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app <https://lni-wa-gov.zoom.us/j/85457550685?pwd=cENBZVhUaDVUTzNtZE5aZkhuTVhJZz09>, Passcode L&IGrant21, or call in (audio only) 1-253-215-8782, Passcode 0485627819. The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 1, 2022.

Submit Written Comments to: Tracy West, Department of Labor and Industries (L&I), Government Affairs and Policy Division, P.O. Box 44001, Olympia, WA 98504-4001, email tracy.west@lni.wa.gov, fax 360-902-4202, by 5:00 p.m., on January 6, 2022.

Assistance for Persons with Disabilities: Contact Tracy West, phone 360-902-6954, fax 360-902-4202, email tracy.west@Lni.wa.gov, by January 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes the small employer emergency safety grant program and implements ESHB 1097, codified as RCW 51.04.180. ESHB 1097 was passed to increase worker protections from hazards in the workplace. The bill also created the safety grant program for small employers during declared states of emergency. The proposed rule:

- Includes pertinent definitions;
- Establishes how the program will be authorized which conforms with ESHB 1097;
- Defines eligibility requirements for those wishing to apply for the grant program when it is active;
- Outlines what will be on the grant program's application;
- Outlines how grants will be awarded, and how an applicant can request reconsideration of a denied grant application;
- Includes guidance on how L&I will prioritize grant applications; and lastly
- Outlines recordkeeping requirements when an applicant receives a grant.

Reasons Supporting Proposal: Rules are needed so L&I can administer the small employer emergency grant program when needed and reserve funds exist. ESHB 1097 was motivated by recognition of the COVID-19 pandemic's impact on small businesses, especially those that had difficulty affording the cost of meeting required safety and health requirements and providing personnel protective equipment to workers. Those unable to meet emergency safety and health requirements had to close. L&I was directed by ESHB 1097 to engage in rule making to establish the guidance for grants based on the type, scope, and time frame of a declared state [of] emergency, and criteria for how grants will be prioritized.

Statutory Authority for Adoption: Chapter 253, Laws of 2021; RCW 51.04.180.

Statute Being Implemented: RCW 51.04.180.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 360-902-6954; Implementation and Enforcement: Celia Nightingale, Tumwater, Washington, 360-742-8438.

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 Tracy West, L&I, Government Affairs and Policy Division, P.O. Box 44001, Olympia, WA 98504-4001, phone 360-902-6954, fax 360-902-4202, email tracy.west@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the 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 state-wide 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.

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 rule does not impose costs on small businesses. It is a voluntary grant program meant to aid small employers during a declared state [of] emergency under RCW 43.06.010. There is only one requirement in the rule to maintain records of receipts. Recordkeeping is standard practice in businesses and this requirement is only in place for those who receive grant awards.

November 16, 2021

Joel Sacks

Director

Chapter 296-910 WAC

SMALL EMPLOYER EMERGENCY SAFETY GRANT PROGRAM

NEW SECTION

WAC 296-910-001 Purpose. (1) The purpose of this chapter is to set guidance and eligibility requirements for a grant program for small employers in need of assistance during a state of emergency declared under RCW 43.06.010.

(2) The grant program provides for one-time grants to small employers for purchases of equipment, gear, or capital costs to meet any new safety and health requirements related to the emergency that are required before the small employer is permitted to continue or resume business operations.

NEW SECTION

WAC 296-910-003 Definitions. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries.

(3) "Government" means local, state, or federal government.

(4) "Employee" means a "worker" for workers' compensation coverage purposes, as defined in RCW 51.08.180.

(5) "Employer" has the same meaning as in RCW 51.08.070.

(6) "Small employer" means:

(a) A for-profit or nonprofit employer who is not self-insured and pays workers' compensation premiums to the state fund as defined in RCW 51.08.175.

(b) An employer with a total of 25 or fewer full-time equivalent employees in all locations, and including those

required to be reported under all department workers' compensation insurance subaccounts. The FTE count is to be calculated by dividing the total employee hours by 2080 hours per year.

NEW SECTION

WAC 296-910-005 Qualifying state of emergency and program authorization. (1) The small employer emergency safety grant program will only be available when the following are met:

(a) The governor has declared a state of emergency as defined in RCW 43.06.010; and

(b) The director authorizes the use of reserve funds to activate the grant program.

(2) In order for the director to authorize the use of this grant program there must be adequate reserves in the accident fund and pension reserve fund as described in RCW 51.04.-180(1).

(3) If the grant program is authorized by the director, the department will send out an announcement that the department is accepting grant applications. It will include:

(a) The new safety and health requirements that must be complied with during a declared emergency.

(b) The department may also publish a list of the types of equipment, gear, or capital improvements that could be options for meeting those requirements.

NEW SECTION

WAC 296-910-010 Eligibility. The following must be met to be considered eligible for a small employer emergency safety grant:

(1) The applicant must be a small employer as defined in WAC 296-910-003.

(2) The applicant must have a need to purchase equipment, gear or make capital improvements to comply with new safety and health regulations or policies during a declared emergency, for use in the area of the declared emergency.

(3) The applicant must not have received funds for the same type of purchase or activity covered by another grant, government program, or insurance contract.

(4) The applicant must be in good standing with the department. If the applicant has debt with the department, there must be a payment plan in place that the applicant has been adhering to.

NEW SECTION

WAC 296-910-015 Grant application. (1) Eligible employers must apply for a small employer emergency safety grant using the department's grant application process.

(2) The application information will include, but not be limited to:

(a) Name of employer;

(b) For businesses, name and contact information of owner(s); for other organizations, name and contact information of executive leader(s);

(c) Industry or type of business or organization;

(d) Employer address, including the address within the area of the declared emergency where employees work;

(e) Employer's federal employer identification number;

(f) Employer's Washington unified business identifier (UBI) number;

(g) Employer's workers' compensation account number;

(h) Number of FTEs;

(i) Amount of funds requested;

(j) Purpose of requested funds, including detail of the equipment, gear, or capital improvement they intend to purchase to comply with new safety and health requirements;

(k) Whether other funding has been received, is anticipated, or is being applied for from another grant, government program, or insurance contract.

NEW SECTION

WAC 296-910-020 Grant awards and reconsideration. (1) The department will announce when small employer emergency grant applications are being accepted and the eligible region, based on the declared state of emergency.

(2) If an eligible employer purchased qualified safety items during a declared emergency and the grant application process later opens, the employer may apply for a grant to reimburse the costs.

(3) The department retains the option of requiring matching funding by employers in a grant funding round for certain types of expenses.

(4) Small employer emergency grants will only be available for the duration of a declared state of emergency.

(5) The grant application period may be limited in time, so grants may not be available for the full duration of the emergency.

(6) Grant amounts awarded may be less than requested by an eligible applicant.

(7) Grant amounts will be determined based on:

(a) Funds available to the department according to RCW 51.04.180;

(b) Number of eligible applicants;

(c) Amount of funds requested by applicants;

(d) Impact of the disaster or event causing the declared emergency, e.g., size of event, number of counties included in declared emergency, affiliated safety and health requirements, etc.;

(e) Type and number of employers affected; and

(f) Other important factors announced by the department.

(8) The department will notify a grant applicant whether a grant has been awarded or declined.

(9) If an application for grant funding is declined, the applicant may make a request to the department for reconsideration of their application for funding.

NEW SECTION

WAC 296-910-025 Grant award prioritization. The factors the department will consider in prioritizing grant awards include, but are not limited to:

(1) Total number of employees;

(2) Total number of employees affected;

(3) Whether an employer provides critical goods or services to the affected community;

(4) Level of impact from the disaster (e.g., proximity, degree of exposure, etc.);

(5) Equipment, gear, or capital improvements that are required;

(6) Amount requested.

NEW SECTION

WAC 296-910-030 Recordkeeping. (1) Grant recipients must keep records and receipts related to an awarded small employer emergency safety grant for six years. These records must be made available for inspection upon request by the department.

(2) Upon request, grant recipients must allow the department on-site to view the purchased equipment, nondisposable gear, or capital improvements during or after the emergency, and to verify emergency use through interviews with employees.

WSR 21-23-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed November 17, 2021, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-054.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-101-3020 Compliance, and 388-101-3000 Definitions, to incorporate 2SHB 1651, 2020 regular legislative session into rules.

Hearing Location(s): On December 21, 2021, 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 virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than December 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 21, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m., on December 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends to WAC 388-101-3020 would adopt by reference 2SHB 1651, 2020 regular legislative session, codified as chapter 71A.26 RCW, as an additional law governing the chapter and to make editorial changes for clarity.

Reasons Supporting Proposal: The proposal is in response to legislation passed during the 2020 regular legislative session. Chapter 71A.26 RCW took effect June 11, 2020. The purpose of this proposal is to amend these rules to ensure compliance by certified community residential services and supports providers and improve readability.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.080, and 71A.26.040.

Statute Being Implemented: Chapter 71A.26 RCW.

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: Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-3210.

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 rule does not meet the definition of significant legislative 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(3) as the 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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposal is exempt from the requirements of the Regulatory Fairness Act as it updates WAC 388-101-3020 to adopt by reference 2SHB 1651, 2020 regular legislative session, codified as chapter 71A.26 RCW as an additional law governing the chapter and to makes editorial changes for clarity.

November 16, 2021
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-07-061, filed 3/15/18, effective 4/15/18)

WAC 388-101-3000 Definitions. The definitions in this section apply throughout this chapter and chapter 388-101D WAC unless the context clearly indicates otherwise.

(1) "Abandonment" ((means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care)) has the same meaning as defined in RCW 74.34.020.

(2) "Abuse" ((means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or

~~punishment of a vulnerable adult~~) has the same meaning as defined in RCW 74.34.020.

~~(In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.~~

~~Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:~~

~~(1) **"Sexual abuse"** means any form of noneconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.~~

~~(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.~~

~~(3) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.~~

~~(4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.~~

~~(5) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:~~

~~(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;~~

~~(b) Is not medically authorized; or~~

~~(c) Otherwise constitutes abuse under this section.)~~

~~(3) **"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.~~

~~(4) **"Case manager"** means the ~~((division of))~~ developmental disabilities administration case resource manager or social worker assigned to a client.~~

~~(5) **"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.~~

~~(6) **"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and~~

individuals who support the client, including the client's legal representative and family.

~~(7) **"Chemical restraint"** ~~((means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition))~~ has the same meaning as defined in RCW 74.34.020.~~

~~(8) **"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(4) and has been determined eligible to receive services by the ~~((division of))~~ developmental disabilities administration under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.~~

~~(9) **"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.~~

~~(10) **"Consent"** means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.~~

~~(11) **"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the ~~((division of))~~ developmental disabilities administration.~~

~~(12) **"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.~~

~~(13) **"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.~~

~~**"Department"** means the Washington state department of social and health services.~~

~~(14) **"Financial exploitation"** ~~((means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given))~~ has the same meaning as defined in RCW 74.34.020.~~

~~(16) **"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.~~

~~(17) **"Group home"** means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapter 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.~~

~~(18) **"Group training home"** means a certified non-profit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).~~

~~(19) **"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.~~

(20) **"Immediate risk," "immediate threat," or "imminent danger"** means serious physical harm to or death of a client or serious threat to a client's life, health, or safety.

(21) **"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

(22) **"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

((+)) (a) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

((2)) (b) Includes client goals for instruction and support that will be formally documented during the year; and

((3)) (c) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (such as, individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

(23) **"Individual support plan"** means a document that authorizes and identifies the ~~((division of))~~ developmental disabilities administration paid services to meet a client's assessed needs.

(24) **"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

(25) **"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff must also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients must be considered instruction and support services staff for the purposes of the applicable training requirements.

(26) **"Legal representative"** means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney at law, attorney in fact, or any other person who is authorized by law to act for another person.

(27) **"Long-term care workers"** include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(28) **"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

(29) **"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove that restricts freedom of movement or normal access to their body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are medically authorized and used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(30) **"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

(31) **"Medication assistance"** means assistance with self-administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

(32) **"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

(33) **"Minimal"** means a violation that results in little or no negative outcome or little or no potential harm for a client.

(34) **"Moderate"** means a violation that results in negative outcome or actual or potential harm for a client.

(35) **"Negative outcome"** includes any negative effect on the client's physical, mental, or psychosocial well-being, including but limited to the client's safety, quality of life, or quality of care.

(36) **"Neglect"** ~~((means:~~

~~(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or~~

~~(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100))~~ has the same meaning as defined in RCW 74.34.020.

(37) **"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

(38) **"Physical restraint"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

(39) **"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

(40) **"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include antipsychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

(41) **"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.-220(12).

(42) **"Recurring"** or **"repeated"** means that the department has cited the service provider for a violation of licensing laws or rules and one or more of the following is present:

((+)) (a) The department previously imposed an enforcement remedy for a violation of the same law, rule, or for substantially the same problem within the preceding twenty-four months; or

((+)) (b) The department cited a violation of the same law, rule, or for substantially the same problem on two occasions within the preceding twenty-four months.

(43) **"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something they do not want to do, or removes something the client owns or has earned.

(44) **"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

(45) **"Serious"** means a violation that results in one or more negative outcomes and significant actual harm to a client that does not constitute imminent danger. It also means there is reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a client.

(46) **"Severity"** means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being (such as, safety, quality of life, quality of care).

(47) **"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

(48) **"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

(49) **"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

(50) **"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, service provider, employment/day program provider, and the person's legal representative or family, provided the person consents to the family member's involvement.

(51) **"Uncorrected deficiency"** means the department has cited a violation of WAC or RCW following any type of

certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

(52) **"Vulnerable adult"** ~~((includes a person:~~
~~(1) Sixty years of age or older who has the functional, mental, or physical inability to care for themselves;~~
~~(2) Found incapacitated under chapter 11.88 RCW;~~
~~(3) Who has a developmental disability as defined under RCW 71A.10.020;~~
~~(4) Admitted to any facility;~~
~~(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or~~
~~(6) Receiving services from an individual provider)) has the same meaning as defined in RCW 74.34.020.~~

AMENDATORY SECTION (Amending WSR 14-10-028, filed 4/28/14, effective 5/29/14)

WAC 388-101-3020 Compliance. The service provider must be in compliance with:

(1) All the requirements of this chapter ~~((:))~~ and chapter 388-101D WAC, except that ~~((:))~~ the licensing requirements for adult family homes and assisted living facilities supersede ~~((this chapter))~~ these chapters if the requirements under respective chapters 388-76 and 388-78A WAC conflict with ~~((this chapter))~~ these chapters;

(2) The laws governing this chapter, including chapter 71A.12 ~~((and))~~, 71A.22, and 71A.26 RCW;

(3) The requirements of chapter 74.34 RCW;

(4) The department's residential services contract. Except that, the requirements of this chapter supersede any conflicting requirements with the contract, or appendices to the contract; and

(5) Other relevant federal, state and local laws, requirements, and ordinances.