

WSR 23-03-057
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed January 11, 2023, 11:53 a.m., effective February 11, 2023]

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

Purpose:

SWCAA 400-025 Adoption of Federal Rules. The proposed rule changes update the adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions. The proposed rule change updates the definition for volatile organic compound.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes make administrative edits and remove "A" reference in section (1)(f).

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes revise the explanation of application fees.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes remove affirmative New Source Review applicability citations from section (12), add a pool heater exemption in section (13)(b), adopt the federal plan found in 40 C.F.R. 62, Subpart 000, and make administrative edits.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes add an Environmental Protection Agency test method citation for small boilers/heaters, add gasoline to list of allowable fuels for emergency service engines, add a 40 C.F.R. 60, Subpart JJJJ citation for emergency service engines, and make administrative edits.

SWCAA 400-100 Registration Requirements. The proposed rule changes revise the description of registration fees and make administrative edits.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed rule changes add registration exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units and make administrative edits.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes change term "source" to "stationary source" in selected sections to improve clarity.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes revise emission test report submission requirements and make administrative edits.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes add a section specifying equipment subject to mandatory permitting, add exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units, and make administrative edits.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes revise application completeness criteria to include applicable fees and make administrative edits.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes remove the adoption exemption for 40 C.F.R. 60, Subpart JJJJ, revise the adoption exemption for 40 C.F.R. 60, Subparts TTTT and UUUUa, and make administrative edits.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed rule changes make administrative edits.

SWCAA 400-290 Severability. The proposed rule changes revise existing language for greater consistency with similar language in other statutes.

SWCAA 400, Appendix C - FEDERAL STANDARDS ADOPTED BY REFERENCE. The proposed rule changes update the lists of adopted federal regulations.

Citation of Rules Affected by this Order: Amending SWCAA 400-025, 400-030, 400-040, 400-045, 400-070, 400-072, 400-100, 400-101, 400-105, 400-106, 400-109, 400-110, 400-115, 400-200, 400-290, 400 Appendix C.

Statutory Authority for Adoption: RCW 70A.15.2040(1).

Adopted under notice filed as WSR 22-19-080 on September 20, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 0.

Date Adopted: January 5, 2023.

Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-025 Adoption of Federal Rules

Federal rules cited in this rule are adopted by reference as in effect on (~~May 1, 2021~~) September 1, 2022.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-030 Definitions

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

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

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

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

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

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

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

(4) **"Air contaminant"** or **"air pollutant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. For the purposes of regulation under the Washington SIP, "air contaminant" means only:

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

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

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

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

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

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

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

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

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

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

(9) **"Alteration"** means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of

process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

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

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

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

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

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

(15) "**Best available control technology**" (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70A.15 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

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

(18) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given "emission unit" in exchange for a decrease in emissions from another "emission unit", pursuant to RCW 70A.15.2240 and SWCAA 400-120.

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

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

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

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

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

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

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

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

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

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

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

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

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

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

(29) "**Continuous parameter monitoring system**" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis. (ref. 40 CFR 51.166 (b) (45))

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

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

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

(33) "**Diesel**" means fuel oil that complies with the specifications for diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975.

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

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

(36) "**Distillate oil**" means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396, diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975, kerosene, as defined by the American Society of Testing and Materials in ASTM D3699, biodiesel as defined by the American Society of Testing and Materials in ASTM D6751, or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467.

(37) "**Ecology**" means the Washington State Department of Ecology.

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

(39) "**Emission**" means a release of air contaminants into the ambient air.

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

(41) **"Emission reduction credit"** (ERC) means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control.

(42) **"Emission standard"** and **"emission limitation"** mean a requirement established under the Federal Clean Air Act, Chapter 70A.15 RCW or a local regulation that limits the quantity, rate, or concentration of air contaminant emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or Chapter 70A.15 RCW.

(43) **"Emission unit"** means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the Federal Clean Air Act, Chapter 70A.15 RCW, or Chapter 70.98 RCW.

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

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

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

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

- (a) The "stationary source" was not in operation prior to August 7, 1962, and was in existence on August 7, 1977;
- (b) The "stationary source" is one of the following:
 - (i) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,
 - (ii) Coal cleaning plants (thermal dryers),
 - (iii) Kraft pulp mills,
 - (iv) Portland cement plants,
 - (v) Primary zinc smelters,
 - (vi) Iron and steel mills,
 - (vii) Primary aluminum ore reduction plants,
 - (viii) Primary copper smelters,
 - (ix) Municipal incinerators capable of charging more than 250 tons of refuse per day,
 - (x) Hydrofluoric, sulfuric, or nitric acid plants,
 - (xi) Petroleum refineries,
 - (xii) Lime plants,
 - (xiii) Phosphate rock processing plants,
 - (xiv) Coke oven batteries,
 - (xv) Sulfur recovery plants,
 - (xvi) Carbon black plants (furnace process),
 - (xvii) Primary lead smelters,
 - (xviii) Fuel conversion plants,
 - (xix) Sintering plants,
 - (xx) Secondary metal production plants,
 - (xxi) Chemical process plants,
 - (xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
 - (xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,
 - (xxiv) Taconite ore processing plants,
 - (xxv) Glass fiber processing plants,
 - (xxvi) Charcoal production plants; and

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

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

(48) "**Federal Clean Air Act**" (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

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

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

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

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

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

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

(54) "**Fugitive emissions**" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

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

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

(58) **"Greenhouse gas"** means, for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

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

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

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

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

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

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

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

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

(65) (a) **"Major modification,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas means the same as the definition found in SWCAA 400-810.

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

(66) (a) **"Major stationary source,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

(67) **"Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equip-

ment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not considered to be malfunctions.

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

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

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

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

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

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

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

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

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

(73) **"National Ambient Air Quality Standard"** (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM₁₀, PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

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

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

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

(77) (a) "**Net emissions increase,**" as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

(78) "**New source**" means one or more of the following:

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

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

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

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

(e) Relocation of a "stationary source" to a new location, except in the case of portable sources operating under a valid portable source permit as provided in SWCAA 400-036 and 400-110(6);

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

(g) Nonroutine replacement or modification of a boiler shell and/or tubes without replacement of the associated burner(s); or

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

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

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

(81) "**Nonroad engine**" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(89) **"Order"** means any regulatory order issued by the Agency or Ecology pursuant to Chapter 70A.15 RCW, including, but not limited to RCW 70A.15.3010, 70A.15.2220, 70A.15.2210 and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, or-

der of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

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

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

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

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

(94) "**Parts per million by volume**" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulates.

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

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

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

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

(96) "**Permitting agency**" means ecology or the local air pollution control agency with jurisdiction over a "source."

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

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

(99) "**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.

(100) "**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 Washington SIP.

(101) "**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.

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

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

(104) "**Portable source**" means a "stationary source" consisting of one or more "emission units" that is portable or transportable and capable of being operated at multiple locations. Portable source includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

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

(106) "**Predictive emissions monitoring system**" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis. (ref 40 CFR 51.166 (b) (44))

(107) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400-700 through WAC 173-400-750.

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

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

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

(111) "**Regulatory order**" means an order issued by the Agency or Ecology to an air contaminant source to achieve compliance with any

applicable provision of Chapter 70A.15 RCW, rules adopted thereunder, or the regulations of the Agency. Note: For further clarification, refer to the definitions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

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

(113) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification." Secondary emissions do not include any emissions that come directly from a mobile source, such as tailpipe emissions from a motor vehicle, train, or vessel.

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

(115) (a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

(116) "**SIP**" means the same as "State Implementation Plan".

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

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

(119) "**Southwest Clean Air Agency**" (SWCAA) means the local clean air agency empowered to enforce and implement the Federal Clean Air Act 42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter 70A.15 RCW) in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(137) **"Volatile organic compound"** (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; t-butyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2); cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear, completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may

be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by the Agency or EPA.

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

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

(i) Tertiary butyl acetate.

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

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-040 General Standards for Maximum Emissions

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

All "emission units" are required to use reasonably available control technology (RACT) that may be determined for some "stationary sources" or "source categories" to be more stringent than the applicable emission limitations of this regulation or any Chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Agency shall, as provided in RCW 70A.15.2230, define RACT for each "stationary source" or "source category" and issue a rule or regulatory order requiring the installation of RACT.

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

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

(b) When the owner or operator of an "emission unit" supplies valid data to show that the presence of uncombined water is the only

reason for the opacity to exceed twenty percent or an alternative opacity standard established in this section.

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

(d) When an alternate opacity limit has been established per RCW 70A.15.3000 (2) (c).

(e) Alternative Standard for Boiler Startup or Shutdown. Hog fuel or wood-fired boiler in operation before January 24, 2018. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the requirements below are met.

(i) The owner or operator notifies the permitting authority at least twenty-four hours prior to the planned boiler startup or shutdown or within two hours of restarting the boiler within twenty-four hours after the end of an unplanned shutdown (i.e., malfunction or upset).

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends when the boiler starts supplying useful thermal energy or four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in

(e) (vi) (B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) Alternative standard.

(A) Visible emissions during startup or shutdown (~~shall~~) must not exceed forty percent opacity for more than three minutes in any hour, as determined by SWCAA Method 9; or

(B) During startup or shutdown, the owner or operator (~~shall~~) must:

(I) Operate all continuous monitoring systems;

(II) Use only clean fuel as identified in 5.b. in Table 3 of 40 CFR Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the twenty percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control devices within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan. The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator (~~shall~~) must use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The owner or operator maintains records sufficient to demonstrate compliance with (e) (i) through (vi) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended; and

(D) The compliance option in (e)(vi) of this subsection that was chosen and documentation of how the conditions of that option were met.

(f) Furnace refractory curing. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by SWCAA Method 9((A))) (~~shall~~) must not exceed forty percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator (~~shall~~) must meet all of the following requirements:

(i) The total duration of refractory curing (~~shall~~) must not exceed thirty-six hours;

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 CFR Part 63, Subpart DDDDD;

(iii) Provide a copy of the manufacturer's instructions on curing refractory to the permitting authority;

(iv) Follow the manufacturer's instructions on curing refractory, including all instructions on temperature increase rates and holding temperatures and time;

(v) Engage the emission controls as soon as possible during the curing process; and

(vi) Notify the permitting authority at least one working day prior to the start of the refractory curing process.

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

(i) (~~No~~) Visible emissions (~~shall~~) must not cross the boundary of the military training site/reservation.

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

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

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

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

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

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

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

(4) **Odors.**

(a) No person shall cause or allow the generation of any odor from any "source" or activity, which may unreasonably interfere with any other property owner's use and enjoyment of his property. The Agency may take enforcement action under this section if it documents the following:

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

Level 0 No odor detected,

Level 1 Odor barely detected,

Level 2 Odor is distinct and definite, any unpleasant characteristics recognizable,

Level 3 Odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 Odor is so strong that a person does not want to remain present; and

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

(b) When the "source" is using "good agricultural practices," as provided in RCW 70A.15.4530, no violation of this section ~~((shall))~~ will have occurred.

(5) **Emissions detrimental to persons or property.** No person shall cause or permit the emission of any air contaminant from any "source" if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.** No person shall cause or permit the emission of a gas containing sulfur dioxide from any "emission unit" in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent carbon dioxide as required by the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes.

(7) **Concealment and masking.** No person shall cause or permit the installation or use of any means that conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this section.

(8) **Fugitive dust sources.**

(a) The owner or operator of any "source" ~~((of))~~ or activity that generates fugitive dust ~~((shall))~~ must take reasonable precautions to prevent fugitive dust from becoming airborne and ~~((shall))~~ must maintain and operate the "source" or activity to minimize emissions.

(b) The owner(s) or operator(s) of any existing "stationary source(s)" of fugitive dust that has been identified as a significant contributor to a PM₁₀ or PM_{2.5} nonattainment area ~~((shall be required to))~~ must use reasonably available control technology (RACT) to con-

trol emissions. The status of a "stationary source" as a significant contributor will be determined by the criteria found in SWCAA 400-113(3).

Reviser's note: The typographical 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.

Reviser's note: The unnecessary underscoring and strikethrough 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-045 Permit Application for Nonroad Engines

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

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for those identified in section (3) below.

(3) Exemptions

(a) Engines operating in SWCAA jurisdiction prior to November 9, 2003;

(b) Nonroad engine installations with an aggregate power rating less than 500 horsepower not associated with stationary sources;

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

(d) Small/residential water well drilling rigs;

(e) Portable firefighting equipment;

(f) Mobile cranes and pile drivers;

(g) Engines used for emergency flood control;

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

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

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

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

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

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

(5) ~~((Application)) Fees.~~ ~~((A filing fee plus a review fee, as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, shall be submitted with the application prior to Agency review.~~

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

as possible and will receive priority over non-expedited applications.)

Before the Agency may review a permit application or issue a permit, the applicant must submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(6) **Agency actions.** Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(7) **Withdrawn or exempt applications.**

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: The unnecessary underscoring and strikethrough 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-070 General Requirements for Certain Source Categories

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

(2) **Hog fuel boilers.**

(a) Hog fuel boilers (~~(shall)~~) must meet all provisions of SWCAA 400-040 and 400-050(1).

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

(3) **Orchard heating.**

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

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

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

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton

of acid produced. Sulfuric acid production (~~shall~~) must be expressed as one hundred percent H₂SO₄.

(6) Gasoline dispensing facilities.

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

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

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

(7) Perchloroethylene dry cleaners.

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

(b) Applicability.

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

TABLE 1. PCE Dry Cleaner Source Categories

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

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

(c) Operations and maintenance record.

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

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

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

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

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

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

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

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

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

- (IV) The date the temperature was taken;
- (D) Carbon adsorber information. If a carbon adsorber is being used, record the following information:
 - (I) The concentration of PCE in the exhaust of the carbon adsorber, and
 - (II) The date the concentration was measured;
- (E) A record of the volume of PCE purchased each month must be entered by the first of the following month;
- (F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;
- (G) All receipts of PCE purchases; and
- (H) A record of any pollution prevention activities that have been accomplished.
- (d) General operations and maintenance requirements:
 - (i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.
 - (ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.
 - (iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.
 - (iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.
 - (v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.
 - (vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.
 - (vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

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

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

TABLE 3. Minimum Inspection Frequency

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

- (ii) An inspection must include an examination of these components for condition and perceptible leaks:
 - (A) Hose and pipe connections, fittings, couplings, and valves;
 - (B) Door gaskets and seatings;
 - (C) Filter gaskets and seatings;
 - (D) Pumps;
 - (E) Solvent tanks and containers;
 - (F) Water separators;
 - (G) Muck cookers;
 - (H) Stills;
 - (I) Exhaust dampers; and
 - (J) Cartridge filter housings.

- (iii) The dry cleaning system must be inspected while it is operating.
- (iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.
- (f) Repair requirements:
 - (i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.
 - (ii) If repair parts are unavailable, they must be ordered within 2 business days of detecting the leak.
 - (iii) Repair parts must be installed as soon as possible, and no later than 5 business days after arrival.
 - (iv) The date and time each leak was discovered must be entered in the operations and maintenance record.
 - (v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.
- (g) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:
 - (i) Outlet air temperature requirements:
 - (A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.
 - (B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.
 - (C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.
 - (D) The air temperature sensor must meet these requirements:
 - (I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;
 - (II) The air temperature sensor must be accurate to within 2°F (1.1°C);
 - (III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and
 - (IV) The air temperature sensor must be labeled "RC outlet."
 - (ii) Inlet air temperature requirements:
 - (A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.
 - (B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.
 - (C) The air temperature sensor must meet these requirements:
 - (I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;
 - (II) The air temperature sensor must be accurate to within 2°F (1.1°C);
 - (III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and
 - (IV) The air temperature sensor must be labeled "RC inlet."
 - (iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:
 - (A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

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

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

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

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

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

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible.

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

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

(8) Abrasive blasting.

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

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

(c) All abrasive blasting of materials that contain, or have a coating that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance (~~(shall)~~) must be analyzed prior to blast operations. If a toxic or hazardous material is present in the blast media or removed media, all material (~~(shall)~~) must be handled and disposed of in accordance with applicable regulations.

(9) **Sewage sludge incinerators.**

(a) Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) are adopted by reference (as in effect on the date cited in SWCAA 400-025).

(b) The federal plan found under 40 CFR 62 Subpart LLL is adopted by reference (as in effect on the date cited in SWCAA 400-025).

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

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

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

(c) Standards for MSW landfill emissions:

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

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

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

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

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

(e) Test methods and procedures:

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

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

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

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

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

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

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

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

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

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

(h) Gas collection and control systems:

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

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

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

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

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

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

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

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

(i) Air operating permit:

(i) An MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to WAC 173-401 for some other reason. If the design capacity

of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to Chapter 173-401 WAC on the date the amended design capacity report is due.

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

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

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

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

(11) **Used oil burners.**

(a) Applicability. The requirements of this section apply to all combustion sources except the following:

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

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

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

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

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

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

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

(b) Requirements. (~~No person shall burn as fuel~~) Used oil (~~that~~) burned as fuel must not exceed (~~s~~) any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;

(iii) Cadmium - 2 ppm maximum;

(iv) Chromium - 10 ppm maximum;

(v) Lead - 100 ppm maximum;

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

(vii) Sulfur - 1.0 percent maximum;

(viii) Flash point - 100°F minimum; and

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

(12) **Coffee roasters.**

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

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

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

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

~~(b) Requirements.))~~ Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch (~~shall~~) must install and operate an afterburner or equivalent control device that treats all roasting exhaust streams prior to discharge to the ambient air.

(13) Natural gas fired water heaters.

(a) Applicability. The requirements of this section apply to all natural gas fired water heaters with a rated heat input less than 400,000 Btu/hr. For the purposes of this subsection, the term "water heater" means a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F.

(b) Requirements.

(i) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 55 ppmv at 3% O₂, dry (0.067 lb per million Btu of heat input).

(ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater (excluding pool heaters) that emits NO_x at levels in excess of 20 ppmv at 3% O₂, dry (0.024 lb per million Btu of heat input).

(14) Rendering plants.

(a) Applicability. The requirements of this section apply to any equipment or process used for the reduction of animal matter. For the purpose of this section, reduction is defined as any heated process (i.e., rendering, cooking, drying, dehydration, digesting, evaporating or protein concentrating). The requirements of this section (~~shall~~) do not apply to any equipment or process used exclusively for the processing of food for human consumption.

(b) Requirements. All gases, vapors, and gas-entrained effluents emitted by reduction operations (~~shall~~) must be captured and:

(i) Incinerated at temperatures of not less than 1,400 degrees F for a period of not less than 0.5 seconds; or

(ii) Processed in a manner determined by the Agency to be equal to or more effective than the method specified in section (i) above.

(15) Outdoor wood-fired boilers.

(a) Applicability. For the purposes of this subsection, the term "outdoor wood-fired boiler" means an outdoor wood-fired hydronic heater or outdoor wood-fired furnace that is an accessory outdoor structure, designed and intended, through the burning of wood, to heat the principal structure or any other site, building, or structure on the premises. The requirements of this subsection (~~shall~~) apply to units with rated heat inputs of 1,000,000 Btu/hr or less.

(b) No person shall sell, install, or operate an outdoor wood-fired boiler unless the affected unit meets the applicable requirements of WAC 173-433.

(c) Outdoor wood-fired boilers (~~shall~~) must only be installed:

(i) For use outside urban growth areas as defined in chapter 36.70A RCW;

(ii) A minimum of fifty feet from the residence it is serving;
 (iii) A minimum of two hundred feet from the nearest residence or commercial establishment that is not located on the same property as the outdoor wood-fired boiler; and

(iv) With a minimum chimney height of fifteen feet. If there is a residence that is not located on the same property within five hundred feet of the outdoor wood-fired boiler, the chimney must extend at least as high as the roof height of all such residences.

(d) Outdoor wood-fired boilers (~~(shall)~~) must only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler (~~(shall)~~) must follow manufacturer-recommended fuel loading times and amounts. (~~In no case, shall a~~) An outdoor wood-fired boiler must not be fired on any prohibited fuel cited in WAC 173-433.

(16) **Cyclonic Burn Barrel Type Incinerators.** Use of cyclonic burn barrel type incinerators is prohibited effective January 1, 2022 except for special circumstances approved in advance by SWCAA.

(17) **Municipal Solid Waste Landfills.** The federal plan found under 40 CFR 62 Subpart 000 is adopted by reference (as in effect on the date cited in SWCAA 400-025).

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

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

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AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to SWCAA 400-072(2) is intended to take the place of an air discharge permit application in regards to approval of new "emission units". An air discharge permit application as described in SWCAA 400-109 is not required for an affected "emission unit" if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. No SUN is required if a source is exempt under SWCAA 400-109. "Emission units" subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are subject to major New Source Review.

Registration. All "emission units" subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) **Exceptions.**

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

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

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

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

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

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);
- (c) Applicable processing fee;
- (d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;
- (e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);
- (f) Control equipment specifications;
- (g) Vendor performance guarantees; and
- (h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

(3) **Processing fee.** Each notification (~~(shall)~~) must be accompanied by the payment of a processing fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

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

(5) **Source categories.**

(a) **Coffee roasters.**

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

(G) Afterburner exhaust (~~shall~~) must be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **~~(Monitoring and)~~ Recordkeeping requirements.** The information listed below (~~shall~~) must be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record (~~shall~~) must include the date and the name of the person making the record entry.

(A) Afterburner operating temperature (~~shall~~) must be recorded weekly;

(B) Quantity of coffee roasted (~~shall~~) must be recorded weekly;

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

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action (~~shall~~) must be recorded promptly after each occurrence.

(v) **~~(Testing)~~ Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" (~~shall~~) must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the owner or operator (~~shall~~) must be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected coffee roaster (~~shall~~) must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and afterburner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) **Small gas fired boilers/heaters.**

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam

or to heat water that is not used exclusively to produce electricity for sale.

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

(A) Visible emissions from the boiler/heater exhaust stack ~~((shall))~~ must not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A)

(B) Each boiler/heater ~~((shall))~~ must be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry, 1-hr avg). EPA test methods from 40 CFR 60, or equivalent, must be used to determine compliance.

(iii) **General requirements.**

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

(iv) ~~((Monitoring and))~~ **Recordkeeping requirements.** The information listed below ~~((shall))~~ must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record ~~((shall))~~ must include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler/heater ~~((shall))~~ must be recorded for each calendar month;

(B) Maintenance activities for the boiler/heater ~~((shall))~~ must be logged for each occurrence;

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

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action ~~((shall))~~ must be recorded promptly after each occurrence.

(v) ~~((Testing))~~ **Emission monitoring requirements.**

(A) Each boiler/heater ~~((shall))~~ must undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring ~~((shall))~~ must be conducted annually thereafter no later than the end of the month in which the original monitoring was conducted. All emission monitoring ~~((shall))~~ must be conducted in accordance with the requirements of SWCAA 400-106(2) ~~((unless otherwise approved by the Agency))~~.

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂, the owner or operator ~~((shall))~~ must either perform 60 minutes of additional monitoring to more accurately quantify CO and NO_x emissions, or initiate corrective action. Corrective action ~~((shall))~~ must be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action ~~((shall))~~ must be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" ~~((shall))~~ must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator ~~((shall))~~ must be reported to the Agency within three business days of receipt.

(C) Emission monitoring results for each boiler/heater ~~((shall))~~ must be reported to the Agency within 15 calendar days of completion on forms provided by the Agency unless otherwise approved by the Agency.

(D) The owner or operator of an affected boiler/heater ~~((shall))~~ must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) **Emergency service internal combustion engines.**

(i) **Applicability.** The provisions of this section apply to emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.).

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

(A) Visible emissions from diesel fired engine exhaust stacks ~~((shall))~~ must not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation ~~((shall))~~ does not apply during periods of cold startup.

(iii) **General requirements.**

(A) Liquid fueled engines ~~((shall))~~ must only be fired on gasoline, #2 diesel, or biodiesel. Fuel sulfur content of liquid fuels ~~((shall))~~ must not exceed 0.0015 percent by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines ~~((shall))~~ must only be fired on natural gas or propane.

(C) Each compression ignition engine ~~((shall))~~ must be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Each spark ignition engine must be comply with the provisions of 40 CFR 60 Subpart JJJJ (as in effect on the date cited in SWCAA 400-025).

~~(E)~~ Engine operation ~~((shall))~~ must be limited to maintenance checks, readiness testing, and actual emergency use.

~~((E))~~ ~~(F)~~ Engine operation for maintenance checks and readiness testing ~~((shall))~~ must not exceed 100 hours per year. Actual emergency use is unrestricted.

~~((F))~~ ~~(G)~~ Each engine ~~((shall))~~ must be equipped with a non-resettable hourmeter for the purpose of documenting hours of operation.

~~((G))~~ ~~(H)~~ Engine exhaust ~~((shall))~~ must be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) ~~((Monitoring and))~~ **Recordkeeping requirements.** The information listed below ~~((shall))~~ must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record ~~((shall))~~ must include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine ~~((shall))~~ must be recorded annually;

(B) Hours of emergency use for each engine ~~((shall))~~ must be recorded annually;

(C) Fuel sulfur certifications (~~(shall)~~) must be recorded for each shipment of liquid fuel;

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

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

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

(v) (~~(Testing)~~) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" (~~(shall)~~) must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator (~~(shall)~~) must be reported to SWCAA within three calendar days of receipt.

(C) The owner or operator of an affected emergency engine (~~(shall)~~) must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **Non-perchloroethylene dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use a solvent other than perchloroethylene and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturers' rated dryer capacity is the sum of the manufacturers' rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

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

(A) VOC emissions from each dry cleaning facility (~~(shall)~~) must not exceed 1.0 ton per year. Emissions (~~(shall)~~) must be calculated using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid shipped offsite as waste may be deducted from the amount of cleaning fluid purchased to calculate actual emissions.

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

(iii) **General requirements.**

(A) Each dry cleaning facility (~~(shall)~~) must be operated in a business space zoned for commercial activity, located a minimum of 200 feet from the nearest residential structure.

(B) Dry cleaning machines (~~(shall)~~) must use DF-2000 cleaning fluid or an equivalent solvent.

(C) Solvent or waste containing solvent (~~(shall)~~) must be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters (~~(shall)~~) must be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks (~~(shall)~~) must be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts (~~(shall)~~) must be ordered within 2

business days of detecting the leak and repair parts ((shall)) must be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment ((shall)) must be operated whenever the equipment served by that control device is in operation. Control devices ((shall)) must be operated and maintained in accordance with the manufacturer's specifications.

(iv) **~~((Monitoring and))~~ Recordkeeping requirements.** The information listed below ((shall)) must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each required record ((shall)) must include the date and the name of the person making the record entry.

(A) Each dry cleaning machine ((shall)) must be visually inspected at least once per week for perceptible leaks. The results of each inspection ((shall)) must be recorded in an inspection log and maintained on-site. The inspection ((shall)) must include, but not be limited to the following:

- (I) Hose connections, unions, couplings and valves;
- (II) Machine door gaskets and seating;
- (III) Filter gaskets and seating;
- (IV) Pumps;
- (V) Solvent tanks and containers;
- (VI) Water separators;
- (VII) Distillation units;
- (VIII) Diverter valves; and
- (IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of ((shall)) must be recorded monthly.

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

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action ((shall)) must be recorded promptly after each occurrence.

(v) **~~((Testing))~~ Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" ((shall)) must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee ((shall)) must be reported to SWCAA within 3 calendar days of receipt.

(C) The owner or operator of an affected petroleum dry cleaner ((shall)) must report the following information to the Agency no later than March 15th for the preceding calendar year:

- (I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and
- (II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(e) **Rock Crushing Operations.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens proposed for installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

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

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

(A) Visible emissions from rock crushing operations (~~shall~~) must not exceed 0 percent opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(iii) **General requirements.**

(A) Each rock crusher and aggregate screen (~~shall~~) must be equipped with a high pressure water spray system for the control of fugitive PM emissions. Operating pressure in each spray system (~~shall~~) must be maintained at 80 psig or greater. A functional pressure gauge (~~shall~~) must be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system (~~shall~~) must be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles (~~shall~~) must be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads (~~shall~~) must be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures (~~shall~~) must be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" (~~shall~~) must comply with the applicable requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(F) For portable rock crushing operations, the owner or operator (~~shall~~) must notify the Agency in advance of relocating approved equipment and (~~shall~~) submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a non-attainment area, will not interfere with scheduled attainment of ambient standards.

(iv) ~~(Monitoring and)~~ **Recordkeeping requirements.** The information listed below (~~shall~~) must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each required record (~~shall~~) must include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles (~~shall~~) must be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment (~~shall~~) must be recorded for each occurrence;

(C) Quantity and size of crushed/screened material (~~shall~~) must be recorded monthly;

(D) Relocation of rock crushing equipment (~~shall~~) must be recorded for each occurrence.

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

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action (~~shall~~) must be recorded promptly after each occurrence.

(v) (~~Testing~~) **Emission monitoring requirements.** An initial emissions test (~~shall~~) must be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing (~~shall~~) must be conducted within 90 calendar days of commencing operation. All emission testing (~~shall~~) must be conducted in accordance with the requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" (~~shall~~) must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator (~~shall~~) must be reported to SWCAA within three business days of receipt.

(C) The owner or operator of an affected rock crusher or aggregate screen (~~shall~~) must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 (~~shall~~) must be reported to the Agency within 45 calendar days of test completion.

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.

Reviser's note: The unnecessary underscoring 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-100 Registration Requirements

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or "emission units" (~~shall~~) must be registered with the Agency in accordance with this section as set forth in RCW 70A.15.2200. A "source" or "emission unit" is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. "Emission units" that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

(a) Registration requirements are not applicable to the following:

(i) "Emission units" or activities exempted under SWCAA 400-101; and

(ii) "Stationary sources" required to apply for, or to maintain, an operating permit under chapter 173-401 WAC.

(b) Regardless of the exemptions provided above, the following "sources" must be registered with the Agency:

- (i) Gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and
- (ii) Dry cleaners with VOC or TAP emissions.

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required (~~shall~~) must initially register affected "emission units" with the Agency. A unique identification number (~~shall~~) will be assigned to each "source" and a separate registration fee (~~shall~~) will be provided for each "emission unit"; provided that, an owner may request to register a process with a detailed inventory of air contaminant sources and emissions related to the process as a single unit. A registration fee (~~shall~~) will not be collected for exempt "emission units" identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" (~~shall~~) must submit annual reports to the Agency. Each report (~~shall~~) must contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70A.15 RCW. The owner, operator, or their designated representative (~~shall~~) must sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee (~~shall~~) must be paid before the Agency may register any "emission unit". Annual registration fees are typically based on the number of registered "emission units" and the quantity of "source" emissions during the previous calendar year, but may vary based on source category. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or "emission units" that permanently shut down prior to January 1 of the current registration period (~~shall~~) are not (~~be~~) liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees (~~shall~~) will be considered a violation of this section. Annual registration fees (~~shall~~) must be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

Exceptions:

(a) An annual registration fee (~~shall~~) will be charged to each gasoline transport tank as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a source may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70A.15.1030(17), are not subject to Registration and (~~shall~~) must pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year (~~shall~~) will be considered delinquent. Pursuant to RCW 70A.15.3160(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an "emission unit" are delinquent for two consecutive years or more, the

Agency may revoke the affected "emission unit's" air discharge permit or Order of Approval.

(5) Reporting requirements for transfer or permanent shutdown of registered emission units.

(a) The registered owner or operator (~~shall~~) must report the transfer of ownership or permanent shutdown of registered "emission units" to the Agency within 90 calendar days of shutdown or transfer. The report (~~shall~~) must contain the following information:

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected "emission units";

and

(iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of registered "emission units" (~~shall~~) must file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report (~~shall~~) must contain the following information:

(i) Legal name of the company or individual involved in the transfer;

(ii) Effective date of the transfer;

(iii) Description of the affected "emission units"; and

(iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but (~~shall~~) must be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) Inspections.

(a) Periodic onsite inspections of "emission units" and "sources" (~~shall~~) must be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70A.15.2500.

(b) Agency personnel or representatives (~~shall~~) have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person (~~shall~~) may refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person (~~shall~~) may obstruct, hamper or interfere with any such inspection.

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

SWCAA 400-101 Emission Units Exempt from Registration Requirements

(1) **Applicability.** The emission units listed in subsection (4) of this section are exempt from the registration requirements of SWCAA 400-100. If an exempt emission unit is located at a "stationary source" that is otherwise required to be registered, the Agency may require that the exempt emission unit be included in the "stationary

source" registration. If an exempt emission unit is located at a Title V facility, it must be included in the facility's Title V permit in accordance with Chapter 173-401 WAC. The owner or operator of any emission unit exempted from registration under this section (~~shall~~) must maintain documentation sufficient to verify that the emission unit is entitled to exemption under this section.

An exemption from new source review pursuant to SWCAA 400-109 (~~shall not be construed as~~) does not constitute an exemption from registration under this section.

(2) Wherever a "stationary source" has multiple emission units, which are similar in function and purpose, exemption status (~~shall~~) must be determined based on aggregate capacity (e.g., horsepower, Btu per hour, airflow, etc.) or the aggregate emissions of similar emission units.

(3) **Exempt emission thresholds.** A "stationary source" (~~shall be~~) is exempt from registration if the uncontrolled potential to emit from all emission units at that site or facility is less than all of the applicable emission thresholds listed below. To qualify for an emission threshold exemption, the owner or operator (~~shall~~) must submit to the Agency a summary of all activities/equipment that emit air pollutants, and calculate potential emissions from the facility based on maximum levels of production/operation. The Agency (~~shall~~) must review and validate the submitted documentation prior to granting an exemption.

| <u>Pollutant</u> | <u>Exemption Threshold</u> |
|-----------------------------|---|
| Criteria pollutants and VOC | 1.0 tpy, combined |
| Lead | 0.005 tpy (10 lb/yr) |
| Ozone depleting substances | 1.0 tpy, combined (as defined in SWCAA 400-030) |
| Toxic air pollutants | 1.0 tpy (combined) or less than applicable SQER per Chapter 173-460 WAC, whichever is less. |

(4) **Exempt equipment and activities.**

(a) Asphalt roofing and application equipment (not manufacturing or storage equipment).

(b) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families.

(c) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes.

(d) Laundering devices, dryers, extractors, or tumblers for fabrics using water solutions of bleach and/or detergents.

(e) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business.

(f) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment).

(g) Retail paint sales establishments (not including manufacturing).

(h) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.

(i) Sewing equipment.

(j) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other structures provided operations are in compliance with the provisions of SWCAA 400-070(8).

(k) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-101(3). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses that do not exceed the emission thresholds specified in SWCAA 400-101(3). This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations.

(l) Residential wood heaters (e.g., fireplaces and woodstoves).

(m) Office equipment, operations and supplies.

(n) Internal combustion engines used for emergency service that have an individual power rating of less than 50 horsepower.

(o) Internal combustion engines used for emergency service that are located at a facility with a maximum (~~aggregate~~) combined power rating less than 200 horsepower. In determining the (~~aggregate~~) combined power rating of a facility, individual units with a rating of less than 50 horsepower (~~shall not be~~) are not considered.

(p) Steam cleaning equipment used exclusively for that purpose.

(q) Refrigeration systems that are not in air pollution control service.

(r) Housekeeping activities and equipment.

(s) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.

(t) Natural and forced air vents and stacks for bathroom/toilet facilities.

(u) Personal care activities.

(v) Lawn and landscaping activities.

(w) Flares used to indicate danger to the public.

(x) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425 and SWCAA 476.

(y) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

(z) Natural gas or propane fired, rooftop air heating units operated for the purpose of comfort heating.

(aa) Natural gas or propane fired heating units with individual rated heat inputs of less than 200,000 Btu per hour operated solely for the purpose of freeze protection.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "stationary source" shall maintain records of the type and quantity of emissions from the "stationary source" and other information deemed necessary to determine whether the "stationary source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Stationary sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA

400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "stationary sources" shall submit an inventory of emissions from the "stationary source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter PM₁₀, PM_{2.5}, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a) Gasoline Stations. Emission reports shall be submitted to the Agency no later than January 31 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the January 31 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Small "stationary sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(c) Large "stationary sources." At a minimum, "stationary sources" satisfying the criteria of 40 CFR 51, Subpart A will be submitted to EPA by the Agency for inclusion in the national emission database. Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon request, the "stationary sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected "stationary source" makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(d) Greenhouse gases. The Agency may require that "stationary sources" submit an inventory of greenhouse gas emissions. Affected "stationary sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the Executive Director or an authorized representative may require any "stationary source" under the jurisdiction of the Agency to conduct stack and/or ambient air monitoring and to report the results to the Agency.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators:

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Agency by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fired steam generators:

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4) (e) do not apply to wood residue fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4) (d) shall be subject to approval by the Agency.

(e) Owners and operators of those "stationary sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on

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

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

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

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

(ii) Not subject to an applicable emission standard.

(5) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

(7) **Requirements for Continuous Emission Monitoring Systems.** The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or Agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:

(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 (as in effect on the date cited in SWCAA 400-025), and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

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

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

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

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

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

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

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

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

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

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

(iv) The results of all cylinder gas audits (CGA) and relative accuracy test audits (RATA) conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

AMENDATORY SECTION (Amending WSR 17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

(1) Emission testing requirements.

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or "emission unit" within the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions. Required testing may be periodic and ongoing. Periodic emission testing conducted more than three months prior to an established due date does not fulfill the affected testing requirement unless approved in advance by the Agency.

(b) **Test methods.** Any required emission testing (~~shall~~) must be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality

(DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

(c) **Accommodations for sampling.** The operator of a "source" ~~((shall))~~ must provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an "emission unit". The Agency ~~((shall be allowed to))~~ may obtain a sample from any "emission unit". The operator of the "source" ~~((shall))~~ must be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) **Notification/test plan submission.** The owner or operator of a "source" ~~((shall))~~ must submit a test plan to the Agency in writing at least 10 business days prior to any required emissions test or as otherwise approved by the Agency. Agency personnel ~~((shall))~~ must be informed at least 3 business days prior to testing so that they have an opportunity to be present during testing.

(e) **Test duration.** A minimum of 3 test runs, at least 1 hour in length, ~~((shall))~~ must be performed at maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The results of the individual test runs ~~((shall))~~ must be averaged together for the purpose of demonstrating compliance with applicable emission limits.

(f) **Test records.** A complete record of production related parameters including startups, shutdowns, and adjustments ~~((shall))~~ must be kept during emissions testing to correlate operations with emissions and ~~((shall))~~ must be recorded in the final test report.

(g) **Test reports.** Results of all required emission testing ~~((shall))~~ must be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable air discharge permit. ~~((Test reports shall be submitted in both printed and electronic formats.))~~ Measured concentrations for combustion and incineration "emission units" ~~((shall))~~ must be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The Agency may reject test reports that do not contain the information listed below, and require resubmittal of a complete report. Test reports ~~((shall))~~ must include the following information:

(i) A description of the "emission unit" including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or test locations;

(ii) Time and date of the test and identification and qualifications of the personnel involved;

(iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit, or as specified in the applicable air discharge permit. Where applicable, results ~~((shall))~~ must be reported both as measured and as corrected to the appropriate oxygen correction;

(iv) A summary of control system or equipment operating conditions;

(v) A summary of production related parameters;

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

(vii) A description of the analytical procedures used including all laboratory data; quality assurance/quality control procedures and documentation;

(viii) Copies of field data and example calculations;

- (ix) Chain of custody information;
- (x) Calibration documentation;
- (xi) Discussion of any abnormalities associated with the results;

and

(xii) A statement signed by the senior management official of the testing firm certifying the validity of the emission test report.

(2) **Emission monitoring requirements for combustion sources.**

(a) **Requirement to monitor.** The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) **Monitoring method.** Emission monitoring may be performed with a portable analyzer or EPA reference methods. Alternative methodologies may be used if approved by both EPA and SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration (~~shall~~) must be determined before sampling commences and after sampling has concluded. These "calibration error" measurements (~~shall~~) must be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure (~~shall~~) must include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling (~~shall~~) are not (~~be~~) valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations (~~shall~~) must be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

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

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

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

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

- (i) A description of the "emission unit" including manufacturer, model number and facility designation;
- (ii) Time and date of the emission monitoring;
- (iii) Identification of the personnel involved;
- (iv) A summary of results, reported in units consistent with the applicable emission standard or limit;
- (v) A summary of control system or equipment operating conditions, including firing rate at time of monitoring;
- (vi) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation;
- (vii) Calibration error check documentation, and
- (viii) Copy of calibration gas certificates.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information (~~shall~~) must be identified as set forth in SWCAA 400-270.

(2) **Applicability.**

(a) An air discharge permit application (~~shall~~) must be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may commence construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

- (i) New construction or installation;
- (ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);
- (iii) Review of existing or installed equipment operating without prior approval;
- (iv) Modification, alteration or replacement of existing process or control equipment;
- (v) Relocation of existing equipment;
- (vi) Review of existing equipment with an expired or lapsed approval or registration;
- (vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT, BART, LAER); or
- (viii) Administrative amendment of an existing air discharge permit.

(b) An air discharge permit application must be submitted for the following equipment:

- (i) All batch process coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch;
 - (ii) Continuous process coffee roasters regardless of capacity;
- and
- (iii) Coffee roasting processes involving decaffeination regardless of capacity.

~~((b))~~ (c) Submittal of an air discharge permit application ~~((shall))~~ does not automatically impose review requirements pursuant to SWCAA 400-110.

~~((e))~~ (d) Stationary sources subject to the PSD program (WAC 173-400-700 through -750) ~~((shall))~~ must submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application ~~((shall))~~ must also be submitted to SWCAA.

~~((d))~~ (e) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, ~~((shall))~~ must include all information necessary to meet the requirements of SWCAA 400-800 through 400-860.

~~((e))~~ (f) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected "emission units" and quantify potential emissions, and the payment of a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

~~((f))~~ (g) Permit Extension. A permittee may request extension of a permit's eighteen-month construction period. To request an extension, the permittee must submit a ~~((complete application))~~ written request to the Agency at least 60 calendar days prior to permit expiration. The ~~((application))~~ request shall clearly identify the justification for extension and include relevant supporting information. The permittee shall also pay a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will process the ~~((application))~~ request as described in SWCAA 400-110(9).

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification ~~((shall))~~ must, at a minimum, contain the following information:

- Name and location of "stationary source";
- Description of primary processes at the "stationary source";
- Description of "emission units" at the "stationary source"; and
- Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" ~~((shall))~~ must not begin prior

to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application (~~shall~~) must be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" may choose to comply with the requirements of SWCAA 400-072 in lieu of this section if it meets applicable category criteria contained in SWCAA 400-072 and SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or "emission unit" may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas emissions as part of a permitting action.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all "emission units" at the affected site or facility are less than all of the following exemption emission thresholds.

| <u>Pollutant</u> | <u>Exemption Threshold</u> |
|---------------------------------------|---|
| NO _x , CO, SO ₂ | 1.0 tpy (individual pollutant) |
| PM ₁₀ | 0.75 tpy |
| PM _{2.5} | 0.5 tpy |
| VOC | 1.0 tpy |
| Lead | 0.005 tpy |
| Ozone depleting substances | 1.0 tpy (combined) |
| Toxic air pollutants | The lesser of 1.0 tpy (combined) or the individual SQER per WAC 173-460 (effective 8/21/98) |

(e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

(A) Relocation of a portable source that has an active air discharge permit from SWCAA allowing portable operation,

(B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Natural gas or propane fired, rooftop air heating units operated for the purpose of comfort heating,

(E) Natural gas or propane fired heating units with individual rated heat inputs of less than 200,000 Btu per hour operated solely for the purpose of freeze protection,

~~((D))~~ (F) Asphalt roofing and application equipment (not manufacturing or storage equipment),

~~((E))~~ (G) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

~~((F))~~ (H) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

~~((G))~~ (I) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,

~~((H))~~ (J) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

~~((I))~~ (K) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

~~((J))~~ (L) Retail paint sales establishments (not including manufacturing),

~~((K))~~ (M) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

~~((L))~~ (N) Sewing equipment,

~~((M))~~ (O) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

~~((N))~~ (P) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(d). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

~~((O))~~ (Q) Residential wood heaters (e.g., fireplaces and woodstoves),

~~((P))~~ (R) Office equipment, operations and supplies,

~~((Q))~~ (S) Steam cleaning equipment used exclusively for that purpose,

~~((R))~~ (T) Refrigeration systems that are not in air pollution control service,

~~((S))~~ (U) Housekeeping activities and equipment,

~~((T))~~ (V) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

~~((U))~~ (W) Natural and forced air vents and stacks for bathroom/toilet facilities,

~~((V))~~ (X) Personal care activities,

~~((W))~~ (Y) Lawn and landscaping activities,

~~((X))~~ (Z) Flares used to indicate danger to the public,

~~((Y))~~ (AA) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425,

~~((Z))~~ (AB) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question,

~~((AA))~~ (AC) Emergency service internal combustion engines individually rated at less than 50 horsepower, and

~~((AB))~~ (AD) Emergency service internal combustion engines located at a facility where the ~~((aggregate))~~ combined power rating of all internal combustion engines is less than 200 horsepower. In determining the ~~((aggregate))~~ combined power rating of a facility, individual units with a rating of less than 50 horsepower ~~((shall not be))~~ are not considered,

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application ~~((or issue a permit))~~, the applicant ~~((shall))~~ must submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(5) **Final determination.**

(a) Each complete air discharge permit application ~~((shall))~~ must result in the issuance of a final determination to approve or deny consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) ~~((shall))~~ must be complied with for each air discharge permit application. Air discharge permit applications for actions that are subject to SEPA review ~~((shall))~~ must include a completed environmental checklist as provided in WAC 197-11 or a copy of another agency's SEPA determination for the same action. A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency ~~((shall))~~ will provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency ~~((shall))~~ will provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" ~~((shall))~~ must not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

(1) **Applicability.**

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 (~~(shall)~~) will be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification (~~(shall be)~~) is limited to the "emission unit(s)" proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" (~~(shall)~~) must comply with the requirements of SWCAA 400-111, 400-112, 400-113, 400-800 through -860, and/or WAC 173-400-700 through -750.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-109(3). The owner or operator of an exempt facility (~~(shall)~~) must maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section;

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046; and

(iii) Portable stationary sources subject to the provisions of SWCAA 400-036.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC (as in effect 8/21/98), not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate specified in WAC 173-460-150. The material change may not cause an existing emission limit to be exceeded.

(2) **Application completeness determination.** Within 30 calendar days of receipt of an air discharge permit application and applicable fees, 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 as provided under RCW 70A.15.2210.

(a) Each application (~~(shall)~~) must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification. The application (~~(shall)~~) must identify the location, design, construction, and operation the new source as necessary to enable the Agency to determine that the new source will meet applicable requirements.

(b) An application for a new major stationary source or major modification (~~(shall)~~) must provide all information required for review pursuant to WAC 173-400-700 through -750 or SWCAA 400-800 through -860, as applicable.

(c) An application for a source subject to the Special Protection requirements for federal Class I areas in WAC 173-400-117(2) (~~(shall)~~)

must include all information required for review of the project under WAC 173-400-117(3).

(d) A completed SEPA checklist or relevant SEPA determination for the proposed action (~~(shall)~~) must be submitted with each application, as provided in WAC 197-11. If a proposed action is exempt from SEPA, sufficient documentation (~~(shall)~~) must be provided to confirm its exempt status.

(e) If an applicant fails to respond to Agency information requests within 60 calendar days, the Agency may presume the air discharge permit application is being withdrawn. The Agency will issue written notice of application withdrawal. No fees will be refunded if an application is withdrawn.

(3) Requirements.

(a) All review requirements (~~(shall)~~) must be met, and an air discharge permit (~~(shall)~~) must be issued by the Agency, prior to construction of any "new source," new "emission unit", or modification.

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

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

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

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

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

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete application, the Agency, Control Officer, or designated representative (~~(shall)~~) must either issue a final decision approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA

400-171. The Agency will promptly provide copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70A.15.2260 and the application required by this section. An application designated for integrated review (~~shall~~) must be processed in accordance with Chapter 173-401 WAC procedures and deadlines and must comply with SWCAA 400-171. A PSD permit application subject to WAC 173-400-700 through -750 (~~shall~~) must comply with the public process requirements of those sections.

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

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

(d) Permits issued pursuant to this section may supersede previously issued permits provided existing terms and conditions not affected by the permitting action or requested to be changed by the applicant are carried forward unchanged.

(e) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency (~~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.

(f) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, the Agency (~~shall~~) must submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

(g) If SWCAA is the lead SEPA agency for the proposed action and mitigation measures are required as a result of the SEPA review, applicable mitigation measures (~~shall~~) must be included in the final determination.

(5) **Appeals.** An air discharge permit, any conditions contained in an air discharge permit, the denial of an air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC.

(6) **Portable sources.** The owner(s) or operator(s) of portable sources, as defined in SWCAA 400-030, (~~shall be allowed to~~) may operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected "emission units" are registered with the Agency pursuant to SWCAA 400-100.

(b) The affected "emission units" have an air discharge permit as a portable "stationary source" issued by SWCAA.

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location prior to starting the operation. This rule section supersedes corresponding notification requirements contained in existing air discharge permits.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the

Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction as provided in SWCAA 400-036.

A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years (~~shall~~) may be removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any portable source removed from active registration (~~shall~~) must submit a new permit application pursuant to SWCAA 400-109 and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air discharge permit issued pursuant to this section (~~shall~~) will be considered a violation of this section. Noncompliance with any term of a regulatory order or air discharge permit used to satisfy the criteria of SWCAA 400-036 (~~shall~~) will be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" (~~shall~~) will become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

(9) **Extension.** If construction has not commenced within eighteen months of permit issuance, the Agency may extend the start of construction period upon a satisfactory demonstration that an extension is justified. To obtain an extension, the permittee must submit a (~~complete application~~) written request as described in SWCAA 400-109 (2) (~~(f)~~) (g). The Agency will review all submitted information, and then approve or deny the extension in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency (~~shall~~) will provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology. The extension of a project that is either a major stationary source or a major modification, as those terms are defined in SWCAA 400-810, (~~shall~~) must also require determination of LAER as it exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(10) **Revocation.** The Agency may revoke a source's Order of Approval or air discharge permit if applicable registration fees are delinquent for 2 or more consecutive years.

(11) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause an applicable emissions standard set by regulation or rule to be exceeded;

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

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

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

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

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

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

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, (~~shall~~) must be considered when determining which new source review approvals are required.

(e) A request to change approval/permit conditions (~~shall~~) must be filed as an air discharge permit application in accordance with SWCAA 400-109. The application (~~shall~~) must meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109(4) (~~shall~~) will apply to these requests.

(12) Reopening for cause.

(a) The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

(i) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.

(ii) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

(iii) The permit does not meet minimum federal standards.

(b) The Agency (~~shall~~) must inform the permittee of its intent to reopen for cause and the reason for the action. Agency actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). The term "Administrator" in 40 CFR Part 60 (~~shall~~) means the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by

the Energy Facility Site Evaluation Council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

- (a) 40 CFR 60.5 Determination of construction or modification
- (b) 40 CFR 60.6 Review of plans
- (c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)
- (d) Subpart Ba Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20a et seq.)
- (e) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)
- (f) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)
- (g) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)
- (h) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)
- (i) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)
- (j) Subpart Cf Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30f et seq.)
- (k) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(l) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(m) Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004 (ref. 40 CFR 60.2980 et seq.)

~~((n) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.))~~

~~((o))~~ (n) Subpart MMMM Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)

~~((p))~~ (o) Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) as it applies to non-Title V sources

~~((q))~~ (p) Subpart UUUUa Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) as it applies to non-Title V sources

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

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks ~~((shall))~~ must be configured to discharge ver-

tically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks (~~shall~~) must discharge at a point higher than surrounding buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis provided the owner/operator demonstrates that the alternate configuration will not cause or contribute to a violation of increment or a NAAQS.

The following source categories are not subject to the provisions of this section:

(a) Combustion units used for space heating provided the units are fired on natural gas, propane, or ultra low sulfur diesel (≤ 15 ppmw S content) and have an individual heat input rating of 2.0 MMBtu/hr or less.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under an applicable Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(3) **Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$ where:

H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Dispersion techniques include increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion (~~shall~~) applies only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(4) **Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study (~~shall~~) must be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study (~~shall~~) must ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration (~~shall~~) must be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at

least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-290 Severability

The provisions of this regulation are severable. If any provision (~~(, meaning phrase, clause, subsection or section, or its application to any person or circumstance)~~) of SWCAA 400 is held to be invalid by any court of competent jurisdiction, (~~(the application of such provision to other circumstances and)~~) the remainder of the regulation (~~(to other persons or circumstances)~~) will not be affected.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

APPENDIX C

FEDERAL STANDARDS ADOPTED BY REFERENCE

The following lists of affected subparts are provided for informational purposes only.

**STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
(NSPS) 40 CFR 60**

Subpart A General Provisions (ref. 40 CFR 60.1 et seq.)

Subpart D Fossil Fuel-fired Steam Generators (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40b et seq.)

Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)

Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)

Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/Medical/Infectious Waste Incinerators (ref. 40 CFR 60.50c et seq.)

Subpart F Portland Cement Plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)

Subpart Ga Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011 (ref. 40 CFR 60.70a et seq.)

Subpart H Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum Refineries (ref. 40 CFR 60.100 et seq.)

Subpart Ja Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)

Subpart K Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Secondary Brass and Bronze Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N Primary Emissions From Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973 (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steel-making Facilities for Which Construction is Commenced After January 20, 1983 (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal Preparation and Processing Plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)

Subpart BBa Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (ref. 40 CFR 60.280a et seq.)

Subpart CC Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain Elevators (ref. 40 CFR 60.300 et seq.)

Subpart EE Surface Coating of Metal Furniture (ref. 40 CFR 60.310 et seq.)

Subpart GG Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)

Subpart HH Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)

Subpart KK Lead-Acid Battery Manufacturing Plants (ref. 40 CFR 60.370 et seq.)

Subpart LL Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)

Subpart MM Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)

Subpart NN Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)

Subpart PP Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)

Subpart QQ Graphic Arts Industry: Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)

Subpart RR Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)

Subpart SS Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)

Subpart TT Metal Coil Surface Coating (ref. 40 CFR 60.460 et seq.)

Subpart UU Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)

Subpart VV Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)

Subpart VVa Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)

Subpart WW Beverage Can Surface Coating Industry (ref. 40 CFR 60.490 et seq.)

Subpart XX Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)

Subpart AAA New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)

Subpart BBB Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)

Subpart DDD VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)

Subpart FFF Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)

Subpart GGG Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)

Subpart GGGa Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)

Subpart HHH Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)

Subpart III VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)

Subpart JJJ Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)

Subpart KKK Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.630 et seq.)

Subpart LLL SO₂ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.640 et seq.)

Subpart NNN VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)

Subpart OOO Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)

Subpart PPP Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)

Subpart QQQ VOC Emissions From Petroleum Refinery Wastewater Systems (ref. 40 CFR 60.690 et seq.)

Subpart RRR VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Reactor Processes (ref. 40 CFR 60.700 et seq.)

Subpart SSS Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)

Subpart TTT Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)

Subpart UUU Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)

Subpart WWW Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification on or After May 30, 1991, but Before July 18, 2014 (ref. 40 CFR 60.750 et seq.)

(See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)

Subpart XXX Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (ref. 40 CFR 60.760 et seq.)

Subpart AAAA Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999, or for Which Modification or Reconstruction is Commenced After June 6, 2001 (ref. 40 CFR 60.1000 et seq.)

(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)

Subpart CCCC Commercial and Industrial Solid Waste Incineration Units (ref. 40 CFR 60.2000 et seq.)

(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)

Subpart EEEE Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006 (ref. 40 CFR 60.2880 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.) (~~Title V Sources Only~~)

Subpart KKKK Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Subpart LLLL New Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)

Subpart OOOO Crude Oil and Natural Gas Production, Transmission and Distribution for Which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (ref. 40 CFR 60.5360 et seq.)

Subpart OOOOa Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015 (ref. 40 CFR 60.5360a et seq.)

Subpart QQQQ New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)

Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) Title V Sources Only

Subpart UUUUa Greenhouse Gas Emissions From Existing Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) Title V Sources Only

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

B) Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)

Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)

Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)

F) Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)

Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61

Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)

Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)

Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)

Subpart E Mercury (ref. 40 CFR 61.50 et seq.)

Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)

Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)

Subpart L Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)

Subpart M Asbestos (ref. 40 CFR 61.140 et seq.)

Subpart N Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)

Subpart O Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)

Subpart P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)

Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

Subpart Y Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)

Subpart BB Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)

Subpart FF Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

(MACT) 40 CFR 63

Subpart A General Provisions (ref. 40 CFR 63.1 et seq.)

Subpart F Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)

Subpart G Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)

Subpart H Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)

Subpart I Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)

Subpart J Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)

Subpart L Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)

Subpart M Perchloroethylene Dry Cleaning Facilities (ref. 40 CFR 63.320 et seq.)

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Subpart N Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (ref. 40 CFR 63.340 et seq.)

Subpart O Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)

Subpart Q Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)

Subpart R Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (ref. 40 CFR 63.420 et seq.)

Subpart S Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)

Subpart T Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)

Subpart U Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)

Subpart Y Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)

Subpart GG Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)

Subpart HH Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

~~((Subpart LL Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)))~~

Subpart MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart NN Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)

Subpart OO Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR Individual Drain Systems (ref. 40 CFR 63.960 et seq.)
Subpart SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)
Subpart TT Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)
Subpart UU Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)
Subpart VV Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)
Subpart WW Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)
Subpart XX Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)
Subpart YY Generic Maximum Achievable Control Technology Standards (ref. 40 CFR 63.1100 et seq.)
Subpart CCC Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)
Subpart DDD Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)
Subpart EEE Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)
Subpart GGG Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)
Subpart HHH Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)
Subpart III Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)
Subpart JJJ Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)
Subpart LLL Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)
Subpart MMM Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)
Subpart NNN Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)
Subpart OOO Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)
Subpart PPP Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)
Subpart QQQ Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)
Subpart RRR Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)
Subpart TTT Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)
Subpart UUU Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)
Subpart VVV Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)
Subpart XXX Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)
Subpart AAAA Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)
Subpart CCCC Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)
Subpart DDDD Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPPP Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYY Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart ZZZZ Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)

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Subpart AAAAA Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBB Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCC Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart DDDD Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)

Subpart EEEEE Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFFF Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGGG Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHHH Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

Subpart IIIIII Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)

Subpart JJJJJ Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)

Subpart KKKKK Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)

Subpart LLLLL Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)

Subpart MMMMM Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)

Subpart NNNNN Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PPPPP Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Subpart UUUUU Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)

Subpart WWWW Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)

Subpart YYYYY Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart ZZZZZ Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)

Subpart BBBBBB Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)

Subpart CCCCC Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)

Subpart DDDDD Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)

Subpart EEEEE Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFF Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)

Subpart GGGGG Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)

Subpart HHHHH Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.)

Title V Sources Only

Subpart JJJJJ Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.)

Title V Sources Only

Subpart LLLLLL Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)

Subpart MMMMM Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)

Subpart NNNNNN Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)

Subpart OOOOO Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)

Subpart PPPPPP Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart VVVVVV Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)

Subpart WWWWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)

Subpart XXXXXX Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.)

Title V Sources Only

Subpart YYYYYY Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)

Subpart ZZZZZZ Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)

Subpart AAAAAA Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)

Subpart BBBBBB Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)

Subpart CCCCCC Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)

Subpart DDDDDD Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)

Subpart EEEEEEE Gold Mine Ore Processing and Production Area Source Category (ref. 40 CFR 63.11640 et seq.)

Subpart HHHHHH Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 63.11860 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

Reviser's note: 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.

WSR 23-05-006
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed February 2, 2023, 10:25 a.m., effective March 5, 2023]

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

Purpose: The proposed rule changes reflect statutory and procedural updates to the administration of the heating oil insurance program.

Citation of Rules Affected by this Order: Amending chapter 374-70 WAC.

Statutory Authority for Adoption: RCW 70A.330.040.

Adopted under notice filed as WSR 22-03-035 [22-21-049] on January 11 [October 11], 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

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

Date Adopted: February 2, 2023.

Phi Ly
Legislative and Policy Manager

OTS-4148.2

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly groundwater, ~~((is))~~ and human health are protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-010, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-010, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-010, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank that has been left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from a heating oil tank or its system that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW and is referred to as PLIA throughout this chapter. For purposes of chapter 70A.330 RCW, agency or PLIA shall also mean staff or employees of the pollution liability insurance agency.

(4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

(6) (a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the

tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to ~~((registered))~~ owners of heating oil tanks registered under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter 70A.305 RCW).

(14) "Named insured" means the ~~((individual insureds who are))~~ owner of the heating oil tank ~~((owners))~~ registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from a heating oil tank.

(16) "Online community" means the cloud-based application and data system used by the agency, the agency's customers, and service providers to submit documentation, report, process, and look up project information.

(17) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

~~((17))~~ (18) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

~~((18))~~ (19) "Per occurrence, per site, per year" means one accidental release per site, per year.

~~((19))~~ (20) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW. For purposes of chapter 70A.330 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

~~((20))~~ (21) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account

established under chapter 70A.325 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70A.325 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

~~((21))~~ (22) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

~~((22))~~ (23) "Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the accidental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the replacement of flooring in the case of a basement tank.

~~((23))~~ (24) "Release" means a spill, leak, emission, escape, or leaching into the environment.

~~((24))~~ (25) "Service provider" means an independent contractor or business who provides corrective action to address heating oil tank releases. A service provider is not a representative, staff, or an employee of the pollution liability insurance agency.

(26) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

~~((25))~~ (27) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that results from a leak or spill from a heating oil tank.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-020, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-020, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-020, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-020, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70A.325 RCW and the heating oil pollution liability insurance program established by chapter 70A.330 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
~~((State of))~~ Washington State
 P.O. Box 40930

Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to (~~registered~~) owners of registered heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-030, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-030, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-030, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-030, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-040 Insurance program. The director, as the heating oil pollution liability insurance program administrator, is responsible for obtaining pollution liability insurance coverage on behalf of the named insureds: All (~~registered~~) owners of registered heating oil tanks as defined in this chapter. The pollution liability insurance policy will provide (~~sixty thousand dollars~~) \$60,000 coverage, including reinsurance, per occurrence, per site, per year and shall be in excess of other valid insurance and warranties. The policy will be reinsured through the pollution liability insurance agency trust account.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-040, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-040, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-050 Eligibility. (~~Owners and operators of~~) In accordance with RCW 70A.330.040(1), only heating oil tanks in (the state of) Washington state with registrations in place before July 2, 2020, and the owner associated with that heating oil tank are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners (~~If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the heating oil tank by submitting to PLIA a completed registration form to be provided by PLIA~~) with heating oil tank registrations in place before July 2, 2020.

(2) Abandoned or decommissioned heating oil tanks are not eligible for coverage under the heating oil pollution liability insurance program, except as described in WAC 374-70-080(4) and 374-70-090(4).

(3) Registration of the heating oil tank in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. In the event of a property ownership transfer, the new property owner must submit ~~((a new))~~ an updated registration form within ~~((one hundred eighty))~~ 180 calendar days of the property ownership transfer in order to ~~((avoid a lapse in coverage from the prior registered owner))~~ maintain the registration. The date of the property ownership transfer will be considered the first day of the ~~((one hundred eighty))~~ 180 calendar days. If the new owner does not register within ~~((one hundred eighty))~~ 180 calendar days, the registration will ~~((be considered a new registration and coverage will start on the date the registration was received))~~ end.

(a) Property ownership transfers include, but are not limited to, sales, gifting, and inheritances.

(b) A person inheriting property with a heating oil tank registration has 12 months to notify PLIA about the property ownership transfer. After 12 months the registration ends if there are no notifications to PLIA and no named property owner.

(4) If a claim for coverage under WAC 374-70-080 or 374-70-090 is submitted within ~~((one hundred eighty))~~ 180 calendar days after the property is transferred, and before the new owner has submitted ~~((a new))~~ an updated registration, the new owner will be deemed to be the named insured for the purposes of this chapter.

~~((4))~~ (5) PLIA reserves the right to perform an independent investigation to verify the eligibility of a heating oil tank. All investigative costs will be the responsibility of PLIA.

~~((5))~~ Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.

~~(6)~~ Owners and operators of heating oil tanks, or sites containing heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program; however, if the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.)

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-050, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-050, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. ~~((Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form.))~~ Corrective action for an accidental release occurring prior to

((the)) this effective date ((of coverage)) will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to ((sixty thousand dollars)) \$60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) **Corrective action costs covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurs after the registration of a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed ((sixty thousand dollars)) \$60,000 per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

(e) Third-party property damage restoration, including landscaping, limited to ((one thousand five hundred dollars)) \$1,500 for each third-party claimant per occurrence, per site, per year;

(f) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks;

(g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW 70A.330.100.

(4) **Corrective action costs not covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurred prior to the registration of a heating oil tank;

(b) Costs covered by other valid insurance or warranties;

(c) Costs in excess of ((sixty thousand dollars)) \$60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties;

(d) Cleanup of contamination from other sources;

(e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(f) Emergency heat restoration procedures;

(g) Cleanup of a site beyond the MTCA cleanup levels;

(h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; ((and))

(i) Corrective action to address releases or damage to the heating oil tank or its system or surrounding property caused by a service provider or contractor;

(j) Corrective action performed by a service provider whose principal is also the named property owner of the registered heating oil tank;

(k) Costs associated with landscaping and surface restoration in excess of previous conditions for the property of the named insured;

(l) Costs associated with property restoration that are not deemed essential to personal safety or are in excess of previous conditions at the site;

(m) Third-party property damage restoration, including landscaping, in excess of ((one thousand five hundred dollars)) \$1,500 for each third-party claimant per occurrence, per site, per year; and

~~((j))~~ (n) Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(ii) A third party for bodily injury or property damage caused by an accidental release.

(5) If a claim exceeds ~~((sixty thousand dollars))~~ \$60,000 in total damages, coverage within the ~~((sixty thousand dollars))~~ \$60,000 policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

(6) A claim will be accepted for coverage only after ~~((an investigation has confirmed))~~ the named insured provides PLIA with documentation which confirms the existence of an accidental release which is eligible for coverage under these rules. PLIA reserves the right to perform an investigation including, but not limited to, soil sample testing, to confirm a release.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-060, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-060, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-060, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-060, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-070 Parties involved with an accidental release and corrective action. Among the potential parties involved when an accidental release is suspected from a heating oil tank or line are the heating oil tank owner or operator, adjacent property owners, heating oil supplier, PLIA, third-party administrator, department of ecology, and heating oil tank service providers.

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner or operator. The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner or operator.

(a) The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner.

(b) The heating oil tank owner or operator is responsible for notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release.

(c) The heating oil tank owner is responsible ~~((to provide))~~ for providing documentation to PLIA that pollution liability coverage will not be provided by the ~~((owner's homeowners'))~~ homeowner's insurer.

(d) If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and approving the completed corrective action.

(2) Adjacent property owners. If an accidental release migrates offsite, or is suspected to have migrated, the adjacent property owner may be involved in the corrective action. In this situation, the heating oil tank owner or operator shall notify PLIA of the occurrence and provide the adjacent property owner's name, address and telephone number.

(3) Heating oil supplier. Some heating oil suppliers provide customer services which may be a resource to evaluate a suspected accidental release to the environment. If after investigating a heating system malfunction, a heating oil supplier determines that an accidental release may have occurred, the heating oil supplier should inform the owner or operator of the accidental release.

(4) PLIA acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and technical assistance to heating oil tank owners and operators (~~(, registers heating oil tanks for insurance coverage)~~) (chapter 374-80 WAC), provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(6) Department of ecology. The department of ecology administers statewide laws and rules detailing MTCA cleanup standards for both soil and groundwater. To be eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor who contracts with ~~((an))~~ the heating oil tank owner (~~(or operator)~~) to perform corrective action, ~~((including submitting reports to PLIA on behalf of the owner or operator))~~ and meets the requirements detailed in WAC 374-70-100.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-070, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-070, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-070, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70A.330 RCW and this chapter. Any failure to sat-

isfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists as soon as practicable after discovery that an accidental release may have occurred;

(4) ~~((The))~~ A claim must be ((submitted to)) made with PLIA by the owner of the registered tank as soon as practicable, but not more than ((thirty)) 180 calendar days after the date a registered heating oil tank becomes abandoned or decommissioned~~((The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA))~~;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will ~~((provide))~~ require the heating oil tank owner ((or operator with a list of insurer)) to select a service provider from PLIA's listing of approved heating oil tank service providers;

(6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action will be initiated or performed without the specific written consent of the heating oil tank owner;

(7) The heating oil tank owner is responsible for investigation to determine the source ~~((and extent))~~ of a suspected accidental release. The heating oil tank owner is also responsible for providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(8) If the claim is determined by PLIA to be valid, PLIA will ~~((so))~~ notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner ~~((or operator))~~. PLIA will ~~((then forward to))~~ inform the heating oil tank service provider of the following forms to be used and which are accessed through the on-line community:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA ~~((a))~~ the site characterization and proposal of the extent and elements of corrective action to include analytical samples, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) ~~((Claim))~~ Closeout report. This ~~((form))~~ will include a project closeout ~~((report))~~ form, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

(10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator and then to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(11) Upon receipt of approval by the heating oil tank owner (~~or operator~~) and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action(s);

(12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and then PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator (~~and~~) and/or PLIA(~~7~~) or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the heating oil tank owner and/or heating oil tank service provider;

(13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form (~~provided by PLIA~~) in the online community;

(14) Upon completion of all corrective action, the heating oil tank owner (~~or operator~~) must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(15) Upon completion of corrective action and approval by the heating oil tank owner (~~or operator~~), the heating oil tank service provider must submit to PLIA a complete claim report;

(16) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(17) If a notice of potential claim has been filed and approved by PLIA but no work commenced within 12 months, then PLIA may close the claim for inactivity, and the registered owner must request re-opening of the claim from PLIA;

(18) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the (~~revenue available for the heating oil pollution liability insurance program~~) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments. Payment will commence with sufficient revenue;

(~~18~~) (19) PLIA will maintain all records associated with a claim for a period of (~~ten~~) 10 years; and

(~~19~~) (20) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-080, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-080, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, §

374-70-080, filed 3/3/97, effective 4/3/97; WSR 96-01-101, §
374-70-080, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-090 Third-party claims. Coverage for a third-party claim under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a third-party claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The third-party claim must be for corrective action resulting from ~~((a leak or spill))~~ an accidental release from a heating oil tank which has been registered with PLIA prior to the ~~((leak or spill))~~ accidental release;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist as soon as practicable after discovery that damage may have occurred from ~~((a leak or spill))~~ an accidental release from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA ~~((not more than thirty calendar))~~ as soon as practicable but no later than 180 days after the date a registered heating oil tank is abandoned or decommissioned ~~((The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA))~~;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(6) If an accidental release from a named insured's heating oil tank has been confirmed as impacting the third-party claimant, PLIA, as designated representative of the insurer will initiate an investigation to determine the ~~((extent and))~~ source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select ~~((a))~~ an approved heating oil tank service provider ~~((, approved by the insurer,))~~ to perform corrective action;

(8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then ~~((forward to))~~ inform the heating oil tank service provider of the following forms to be used and which are accessed through the online community:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA the site characterization and a proposal of the extent and elements of corrective action to include analytical samples, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) ~~((Claim))~~ Closeout report. This form will include a project closeout report, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

(9) The heating oil tank service provider will submit for approval to the third-party claimant and then to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action(s);

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and ~~((the insurer))~~ PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and then PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided ~~((by PLIA))~~ in the online community;

(13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report ~~((After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment))~~;

(15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the third-party claim has been closed;

(16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right

to defer payment at any time that claim demands exceed the ((revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue)) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments;

(17) PLIA will maintain all records associated with a claim for a period of ((ten)) 10 years; and

(18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-090, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-090, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-090, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-090, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-100 Service provider requirements and procedures.

(1) All corrective action shall be performed by insurer approved heating oil tank service providers. A heating oil tank service provider is an independent contractor responsible for corrective action including excavation, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(2) Heating oil tank service providers are required to adhere to the terms and conditions detailed in the program's service provider agreement and to renew this agreement annually.

(a) PLIA provides a list of heating oil tank service providers on PLIA's website. This list is reviewed and updated regularly.

(b) Any service provider suspended or terminated due to violation of the service provider agreement is prohibited from participating in the heating oil insurance program.

(3) Once retained by the named insured or the third-party claimant, the heating oil tank service provider works with the insurer, PLIA, as the insurer's designated representative, the heating oil tank owner or operator and/or the third-party claimant to ((perform the following)):

(a) Perform the corrective action;

(b) Document the costs of the corrective action; and

(c) File the forms required through the online community to receive payment from the heating oil pollution liability insurance program.

((3)) (4) All heating oil tank service providers must follow claims procedures as outlined in WAC ((374-70-070)) 374-70-080.

((4)) (5) Whenever possible, all corrective action activities must meet the criteria established by MTCA and any pertinent local ordinances or requirements.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-100, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-100, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-120 Appeals. (1) A person may appeal any of the following decisions made under the heating oil pollution liability insurance program to the director:

- (a) A denial of eligibility for coverage;
- (b) Amount of payment allowed for corrective action;
- (c) Amount of payment allowed for property damage;
- (d) Amount of payment allowed for a third-party claim; and
- (e) A determination that cleanup does not meet MTCA standards.

(2) A person has (~~forty-five~~) 45 days after the decision to file a written request for a hearing which will include a detailed statement on the reason for the appeal.

(3) If the written request for a hearing is received within (~~forty-five~~) 45 days, the director shall conduct an adjudicative hearing proceeding under chapter 34.05 RCW.

(4) If the written request for a hearing is not received within (~~forty-five~~) 45 days after the decision, no further consideration will be given to the appeal.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-120, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-120, filed 12/19/95, effective 1/19/96.]

WSR 23-05-021
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed February 6, 2023, 10:57 a.m., effective March 9, 2023]

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

Purpose: The Spokane Regional Clean Air Agency (SRCAA) removed marijuana producers and processors from the agency annual registration program. Amendments included removing marijuana producers and processors from the source category list in Article IV, Section 4.04(A); removing marijuana producers and processors from the notice of construction exemption list in Article V, Section 5.02(I); and citing updates in Article X, Section 10.15 (A) and (B).

Citation of Rules Affected by this Order: Amending SRCAA Regulation I, Article IV, Section 4.04(A); Article V, Section 5.02(I), Article X, Section 10.15 (A) and (B).

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

Adopted under notice filed as WSR 23-01-031 on December 12, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: February 2, 2023.

Margee Chambers
Rule Writer/SIP Planner

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE IV

SECTION 4.04 STATIONARY SOURCES AND SOURCE CATEGORIES SUBJECT TO REGISTRATION

(A) Subject to Registration. The following stationary sources and source categories are subject to registration. Emission rates in SRCAA Regulation I, Article IV, Section 4.04 are based on uncontrolled PTE emissions, unless otherwise noted.

(1) Stationary sources or source categories subject to state requirements:

(a) Any stationary source that qualifies as a new major stationary source, or a major modification (173-400-820 WAC).

(b) Any modification to a stationary source that requires an increase either in a facility-wide emission limit or a unit specific emission limit.

(c) Any stationary source with significant emissions as defined in WAC 173-400-810.

(d) Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its PTE (synthetic minor) through an order issued by the Agency.

(2) Any stationary sources or source categories:

- (a) Required to obtain an Order of Approval under Regulation I, Article V.
- (b) Subject to GOA under Article V and WAC 173-400-560.
- (c) For which the Control Officer determines that emissions of the stationary source, including fugitive emissions, are likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.
- (3) Stationary sources with the following operations:
- (a) Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and abrasive blasting operations that do not exhaust or release fugitive emissions to the ambient air.
- (b) Acid production plants, including all acids listed in Chapter 173-460 WAC.
- (c) Agricultural chemicals, manufacturing, mixing, packaging or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).
- (d) Agricultural drying and dehydrating operations.
- (e) Alumina processing operations.
- (f) Ammonium sulfate manufacturing plants.
- (g) Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).
- (h) Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.
- (i) Cattle feedlots with an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.
- (j) Chemical manufacturing operations.
- (k) Coffee roasting operations.
- (l) Composting operations except noncommercial agricultural and noncommercial residential composting activities.
- (m) Concrete production operations and ready mix plants.
- (n) Flexible polyurethane foam, polyester resin, and styrene production operations.
- (o) Flexible vinyl operations and urethane coating operations.
- (p) Fuel refining operations, blending operations, production operations, including alternative commercial fuel production facilities (e.g. ethanol, bio-diesel, etc.)
- (q) Gasoline and aviation gas storage and dispensing, including:
1. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total gasoline storage capacities greater than 10,000 gallons; and
 2. Bulk gasoline, and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.
- (r) Grainhandling; seed, pea, and lentil processing facilities. Registration shall be in accordance with Article IV, Section 4.03.
- (s) Haycubing or pelletizing operations established at a dedicated collection and processing site.
- (t) Insulation manufacturing operations.
- ~~((u) Marijuana producers.~~
- ~~(v) Marijuana processors with direct processing of the marijuana plant and plant material (dry, cure, extract, compound, convert, package and label usable marijuana and marijuana concentrates.))~~
- (u)~~((w))~~) Metal casting facilities and foundries, ferrous.
- (v)~~((x))~~) Metal casting facilities and foundries, nonferrous.

(w) ~~((y))~~ Metal plating and anodizing operations.

(x) ~~((z))~~ Metallurgical processing operations.

(y) ~~((aa))~~ Mills; grain, seed, feed and flour production, and related operations.

(z) ~~((bb))~~ Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.

(aa) ~~((ee))~~ Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture, and wood by-products).

(bb) ~~((dd))~~ Mineral processing (metallic and nonmetallic), including, but not limited to, rock crushing, sand and gravel mixing operations, except stand-alone rock, soil, or wood screening/conveying operations and blasting operations.

(cc) ~~((ee))~~ Mineralogical processing operations.

(dd) ~~((ff))~~ Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

(ee) ~~((gg))~~ Paper manufacturing operations, except Kraft and sulfite pulp mills.

(ff) ~~((hh))~~ Perchloroethylene dry cleaning operations.

(gg) ~~((ii))~~ Pharmaceuticals production operations.

(hh) ~~((jj))~~ Plastics and fiberglass fabrication, including gel-coat, polyester resin, or vinylester coating operations using more than 55 gals/yr of all materials containing volatile organic compounds or toxic air pollutants.

(ii) ~~((kk))~~ Portland Cement production facilities.

(jj) ~~((ll))~~ Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, and 562219, respectively), including municipal waste combustors; landfills with gas collection systems or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than POTWs.

(kk) ~~((mm))~~ Rendering operations.

(ll) ~~((nn))~~ Semiconductor manufacturing operations.

(mm) ~~((oo))~~ Sewerage systems, POTWs with a rated capacity of more than one million gallons per day (SIC 4952/NAICS 221320).

(nn) ~~((pp))~~ Stump and wood grinding established at a dedicated collection and processing site.

(oo) ~~((qq))~~ Surface coating, adhesive, and ink manufacturing operations.

(pp) ~~((rr))~~ Surface coating operations:

1. All motor vehicle or motor vehicle component surface coating operations; and

2. General surface coating operations with PTE emissions greater than 100 lbs/yr or with PTE toxic air pollutant emissions that exceed any SQER listed in Chapter 173-460 WAC.

(qq) ~~((ss))~~ Synthetic fiber production operations.

(rr) ~~((tt))~~ Synthetic organic chemical manufacturing operations.

(ss) ~~((uu))~~ Tire recapping operations.

(tt) ~~((vv))~~ Wholesale meat/fish/poultry slaughter and packing plants.

(4) Stationary sources with the following equipment:

(a) Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

1. 500,000 Btu/hr using coal or other solid fuels with less than or equal to 0.5% sulfur;

2. 500,000 Btu/hr using used/waste oil, per the requirements of RCW 70.94.610;

3. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, including alternative liquid fuels (i.e., biodiesel, bio-fuels, etc) except used/waste oil;

4. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; or

5. 400,000 Btu/hr, wood, wood waste.

(b) Incinerators, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(c) Internal combustion engines

1. Used for standby, back-up operations only, and rated at or above 500 bhp.

2. Stationary internal combustion engines, other than those used for standby or back-up operations, rated at 100 bhp or more and are integral to powering a stationary source. This includes but is not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

(d) Particulate control at materials handling and transfer facilities that generate fine particulate and exhaust more than 1,000 acfm to the ambient air. This may include pneumatic conveying, cyclones, baghouses, or industrial housekeeping vacuuming systems.

(e) Storage tanks within commercial or industrial facilities, with capacities greater than 20,000 gallons and storing organic liquids with a vapor pressure equal to or greater than 1.5 psia at 68°F.

(5) Any stationary source or stationary source category not otherwise identified above, with uncontrolled emissions rates above those listed in (a)-(d):

(a) Any single criteria pollutant, or its precursors, as defined in 40 CFR 51.165, exceeding emission rates of 0.5 tons/yr, or in the case of lead, emissions rates greater than or equal to 0.005 tons/yr;

(b) TAPs with emission rates exceeding the SQER established in Chapter 173-460 WAC;

(c) Combined air contaminants (criteria pollutants, VOCs, or TAPs) in excess of one (1.0) ton/yr; or

(d) Combined TAPs and VOC emissions greater than 0.5 tons/yr.

(e) The criteria in Section 4.04 (A) (5) (a)-(d) applies to, but is not limited to the following stationary source categories:

1. Bakeries;

2. Bed lining or undercoating production or application operations;

3. Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top, and conveyORIZED cleaner;

4. Distilleries;

5. Dry cleaning non-perchloroethylene operations;

6. Evaporators;

7. General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or pre-packaged aerosol can);

8. Graphic art systems including, but not limited to, lithographic and screen printing operations;

~~(9. Marijuana processors;)~~

~~9. ((10.))~~ Organic vapor collection systems within commercial or industrial facilities, including fume hoods;

- ~~10.~~~~(11.)~~) Ovens, furnaces, kilns and curing with emissions other than combustion emissions;
- ~~11.~~~~(12.)~~) Plasma or laser cutters;
- ~~12.~~~~(13.)~~) Soil and groundwater remediation operations;
- ~~13.~~~~(14.)~~) Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations;
- ~~14.~~~~(15.)~~) Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given);
- ~~15.~~~~(16.)~~) Welding, brazing, or soldering operations; or
- ~~16.~~~~(17.)~~) Wood furniture stripping and treatment operations (commercial only).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE V

SECTION 5.02 NEW SOURCE REVIEW APPLICABILITY AND WHEN REQUIRED

(A) Purpose. SRCAA Regulation I, Article V contains the new source review requirements for stationary and portable sources in Spokane County.

(B) Applicability. Article V applies to all stationary sources, portable sources and source categories listed in Article IV, Section 4.04, unless specifically exempted Article V, Section 5.02(I).

(C) NOC Required for New or Modified Stationary Sources. A NOC application must be filed by the owner or operator and an Order of Approval issued by the Agency prior to the establishment of any of the following stationary source or source categories:

- (1) New stationary sources and source categories subject to the applicability criteria in Article IV, Section 4.04;
- (2) Establishment of a new major stationary source as defined in WAC 173-400-710 and 173-400-810;
- (3) Modifications to an existing stationary source which results in an increase in actual emissions or that requires an increase in either a facility-wide or a unit specific emission limit;
- (4) A major modification to an existing major stationary source as defined in WAC 173-400-710 and 173-400-810;
- (5) Any stationary source with emissions that exceed the SQER in Chapter 173-460 WAC;
- (6) Like-kind replacement of existing emissions unit(s);
- (7) Existing stationary source replacement or substantial alteration of control equipment;
- (8) A stationary source or emission unit(s) resuming operation after it has been closed per Article IV, Section 4.05;
- (9) An existing stationary source that is relocated;
- (10) A stationary source that applies for coverage under a GOA issued by the Agency under WAC 173-400-560 in lieu of filing a NOC application under Article V, Section 5.02; or
- (11) Any stationary source the Agency determines must file a NOC application and obtain an Order of Approval in order to reduce the potential impact of air emissions on human health and safety, prevent injury to plant, animal life, and property, or which unreasonably interferes with enjoyment of life and property.

(D) PSP Required for New or Modified Portable Sources. A PSP application must be filed by the owner or operator and a Permission to

Operate issued by the Agency prior to the establishment of any portable sources which locate temporarily at locations in Spokane County, unless specifically exempted in 5.08(D).

(E) Modification Review. New source review of a modification is limited to the emissions unit(s) proposed to be added or modified at an existing stationary source and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(F) AOP Integrated Review. An owner or operator seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW 70.94.161, and the NOC application required by Article V. A NOC application designated for integrated review must be processed in accordance with the provisions in Chapter 173-401 WAC.

(G) New Major Stationary Source or Major Modification in Nonattainment Areas. The proposed project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860 if:

(1) It is a new major stationary source or major modification, located in a designated nonattainment area;

(2) The project emits the air pollutant or its precursors for which the area is designated nonattainment; and

(3) The project meets the applicability criteria in WAC 173-400-820.

(H) PSD Permitting with New Major Stationary Source or Major Modification. If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(I) Stationary Sources Exempt from Article V.

(1) The following stationary sources are exempt from the requirement to file a NOC application and obtain an Order of Approval, provided that the source has registered with the per Article IV, prior to placing the source in operation:

(a) Batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

~~((b) Marijuana producers and marijuana processors.))~~

(b)~~((e))~~ Motor vehicle or motor vehicle component surface coating operations with PTE emissions less than one hundred (100) lbs/yr and with PTE toxic air pollutant emissions that do not exceed any SQER listed in Chapter 173-460 WAC.

(2) Exemption documentation. The owner or operator of any stationary source exempted under Article V must maintain documentation in order to verify the stationary source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemption in Section 5.02 (I)(1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit and NOC application and receive an Order of Approval from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.02 (I)(1) is not an exemption from registration under Article IV or any other provision of Regulation I. Portable sources are exempt from registration [Section 4.03 (A)(3)].

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMMENDATORY [AMENDATORY] SECTION IN ARTICLE X

SECTION 10.15 MARIJUANA PRODUCTION AND MARIJUANA PROCESSING REGISTRATION AND APPLICATION FEES

(A) Initial Registration Fee. Each source required by SRCAA Regulation I, Article IV, (~~(Exhibit R)~~) Section 4.01 to be registered is required to pay an initial registration fee for the first calendar year or portion of calendar year that the source is part of the Agency registration program. The owner or operator will be responsible for payment of the initial registration fee. After the first year, the owner or operator will pay an annual registration fee under Section 10.15(B).

(1) The initial registration fee is determined by each unique LCB number, license type, and tier level. A separate initial registration fee is required for each unique LCB license number regardless of location. The initial registration fee will be determined by the fee table below:

| Registration Fee Categories | LCB Producer Tier Size | | |
|---------------------------------|------------------------|----------------------|----------------------|
| | LCB Tier 1 | LCB Tier 2 | LCB Tier 3 |
| Producer with processor license | Per the Fee Schedule | Per the Fee Schedule | Per the Fee Schedule |
| Processor only | Per the Fee Schedule | | |
| Producer only | Per the Fee Schedule | | |

LCB = WA State Liquor and Cannabis Board

(B) Annual Registration Fee. Each source required by Article IV, (~~(Exhibit R)~~) Section 4.01 to be registered is required to pay an annual registration fee for each calendar year or portion of each calendar year during which it operates. The owner or operator will be responsible for payment of the annual registration fee. Fees received as part of the marijuana registration program will not exceed the actual costs of program administration.

(1) The annual registration fee is required for each LCB licensed producer and LCB licensed processor. The fee is determined by each unique LCB number, license type, and tier level. A separate registration fee is required for each unique LCB license number regardless of location. The annual fee will be determined by the fee table below:

| Registration Fee Categories | LCB Producer Tier Size | | |
|--|------------------------|----------------------|----------------------|
| | LCB Tier 1 | LCB Tier 2 | LCB Tier 3 |
| Producer indoor only | Per the Fee Schedule | Per the Fee Schedule | Per the Fee Schedule |
| Producer outdoor only | Per the Fee Schedule | Per the Fee Schedule | Per the Fee Schedule |
| Producer indoor and outdoor | Per the Fee Schedule | Per the Fee Schedule | Per the Fee Schedule |
| Producer w/Agency granted production exemption | Per the Fee Schedule | Per the Fee Schedule | Per the Fee Schedule |
| Processor with producer license | Per the Fee Schedule | | |
| Processor only | Per the Fee Schedule | | |

LCB = WA State Liquor and Cannabis Board

(2) Calculating Marijuana Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided, the annual registration fee will be based on fees listed in Section 10.15 (B)(1), plus an additional fee equal to two (2) times the amount of original fee assessed. This method will be used:

- (a) When registration information is not received within ninety (90) days of request, or
- (b) Prior to the registration fee invoice date, whichever is later.

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

Reviser's note: The bracketed material preceding the text above was supplied by the code reviser's office.

WSR 23-05-034
PERMANENT RULES
PIERCE COLLEGE

[Filed February 7, 2023, 7:13 p.m., effective March 10, 2023]

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

Purpose: Pierce College is utilizing the rule-making process to update the student conduct code (chapter 132K-135 WAC) in order to be in compliance with the United States Department of Education federal rules regarding Title IX.

Citation of Rules Affected by this Order: Amending WAC 132K-135-360 and 132K-135-380.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 22-24-082 on December 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: Changes/additions to the Title IX sections to maintain compliance with federal rules and standards.

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

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

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

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

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

Date Adopted: February 7, 2023.

Julie A. White
Chancellor

OTS-3738.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-360 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5-))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-360, filed 5/13/21, effective 6/13/21.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-380 Appeals. ~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132K-135-180.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3) President's office shall serve the final decision on the parties simultaneously.))~~

(1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or in part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from

the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-380, filed 5/13/21, effective 6/13/21.]

WSR 23-05-035
PERMANENT RULES
PIERCE COLLEGE

[Filed February 7, 2023, 7:15 p.m., effective March 10, 2023]

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

Purpose: Pierce College is utilizing the rule-making process to update the student conduct code (chapter 132K-135 WAC) in order to be in compliance with HB [2SHB] 1751 regarding hazing.

Citation of Rules Affected by this Order: Amending WAC 132K-135-040 and 132K-135-070.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Adopted under notice filed as WSR 22-24-083 on December 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: Changes/additions to the jurisdiction and prohibited student conduct sections to maintain compliance with Washington state law.

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

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

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

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

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

Date Adopted: February 7, 2023.

Julie A. White
Chancellor

OTS-4041.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus where indicated in the rule or that in the judgment of the college adversely affects the college community, visitors, or the pursuit of the college's objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of notification of acceptance at the college through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-040, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-070 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment, test, or exam.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(4) **Alcohol.** The use, possession, manufacture, distribution, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(7) **Disorderly conduct.** Conduct, or assisting or encouraging another person to engage in such conduct, which disrupts campus operations or the college's educational, social, or housing programs.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that

governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(10) **Failure to comply with directive.** Failure to comply with the reasonable direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(11) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(12) **Hazing.** ~~Hazing includes (, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student) any act, on or off the college premises, committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions.~~

(13) **Lewd conduct.** Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) **Marijuana or other drugs.**

(a) Marijuana or marijuana products. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend or prescription drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance, including narcotic drugs or opiates, under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(15) **Misuse of computer time or electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene, harassing, or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the computer information systems resources acceptable use or subsequent similar policy.

(16) **Property violation.** Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other

verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for their safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(d) For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual conduct.

(20) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college traffic and parking rules.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-070, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]

WSR 23-05-049

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 10, 2023, 8:27 a.m., effective March 13, 2023]

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

Purpose: The purpose of these amendments is to expand enhanced case management program (ECMP) capacity and clarify appeal rights regarding enrollment onto the ECMP caseload.

Citation of Rules Affected by this Order: New WAC 388-829B-600; and amending WAC 388-829B-200, 388-829B-300, and 388-829B-400.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.320 and chapter 43.382 RCW.

Adopted under notice filed as WSR 23-01-058 on December 14, 2022.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-829B-200, the definition of "caregiver" was amended to remove reference to developmental disabilities administration (DDA)-contracted providers. These caregivers, individual providers, no longer contract with the DDA and are now managed by the Consumer Direct Care Network of Washington.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: February 10, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4954.5

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-200 What definitions apply to this chapter? The following definitions apply to this chapter.

~~("CARE assessment" means an inventory and evaluation of a client's strengths and limitations based on an in-person interview in the client's home or place of residence.)~~

"Caregiver" means a person ~~((contracted with the developmental disabilities administration (DDA) to))~~ who provides ~~((medicaid or waiver))~~ personal care~~((,))~~ or respite care~~((, or attendant care services))~~ services to DDA clients.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020(~~((5-))~~) and has been determined eligible to receive services by DDA under chapter 71A.16 RCW.

"**Collateral contact**" means a person or agency that is involved in the client's life, such as a legal guardian, family member, provider, or friend.

"DDA assessment" means an inventory and evaluation, under chapter 388-828 WAC, of a client's strengths and limitations based on an interview with the client. For the purposes of this chapter, the DDA assessment includes the "DDA assessment details."

"**Independent supports**" means an adult, other than the client's paid caregiver, who observes the care a client receives from their paid caregiver.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-200, filed 3/19/18, effective 4/19/18.]

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-300 Who may DDA enroll in the enhanced case management program? The developmental disabilities administration (DDA) may enroll a client in the enhanced case management program if the client ~~((is largely dependent on a paid caregiver in the client's home))~~ is currently assessed to be eligible for medicaid personal care or community first choice (CFC) services in their home under chapter 388-106 WAC and meets criteria under subsection (1), (2), or (3) of this section.~~((÷))~~

(1) The client's DDA assessment indicates that the home environment may jeopardize the client's health or safety.

~~((1-))~~ (2) The client's ((CARE)) DDA assessment indicates the client:

(a) ((Is not always able to supervise their)) Has difficulty communicating their needs and wants to their caregiver or informing someone when their needs are not being met;

(b) Has ((communication barriers)) a limited ability to advocate for themselves or express themselves, and has few documented collateral contacts; and

(c) Lacks additional, independent supports that regularly help the client monitor the care being provided in their home.~~((÷ or~~

~~((2) The client lives with the paid caregiver and:~~

~~((a) The client has been the subject of an adult protective services or child protective services referral in the past year; or~~

~~((b-))~~ (3) DDA has concerns that the ((home environment or)) quality of care may jeopardize the client's health or safety~~((÷))~~ for reasons such as:

(a) The client has been the subject of an adult protective services referral in the past year;

(b) The client has been the subject of a child protective services referral in the past year;

(c) The client's DDA assessment indicates the client is underweight;

(d) The client's DDA assessment indicates that the primary caregiver is age 65 or older or states that they are "very stressed," and

the caregiver states that the caregiving situation is at "serious risk of failure" or there is concrete evidence of reduced care; or

(e) The client has experienced a destabilizing event, such as a loss of a primary caregiver, hospitalization, or victimization.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-300, filed 3/19/18, effective 4/19/18.]

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

WAC 388-829B-400 How often must the case manager visit the enhanced case management program client? (1) The client's case manager must visit each enhanced case management program client at least once every four months at the client's home, including unannounced visits as needed. Each required visit must not occur more than four months apart.

(2) An unannounced visit may replace a scheduled visit.

~~(3) ((If a client declines a visit, announced or unannounced, the case manager must document the declined visit in the enhanced case management program section in the comprehensive assessment reporting and evaluation (CARE) tool.~~

~~(4))~~ If the case manager is unable to meet with the client for a ~~((required))~~ visit, the case manager must:

(a) ((s)) Schedule a follow-up visit as soon as possible and no later than ((thirty)) 30 days((-)); and

(b) Document that the visit did not occur.

[Statutory Authority: RCW 71A.12.030 and chapters 71A.12, 43.382 RCW. WSR 18-07-073, § 388-829B-400, filed 3/19/18, effective 4/19/18.]

NEW SECTION

WAC 388-829B-600 May a client appeal an enrollment decision for the enhanced case management program? A client does not have a right to appeal:

(1) A decision whether or not to enroll on the enhanced case management program; or

(2) A decision to transfer off the enhanced case management program.

[]

WSR 23-05-052

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 10, 2023, 12:51 p.m., effective March 13, 2023]

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

Purpose: Chapter 246-71 WAC, Medical marijuana authorization database and chapter 246-72 WAC, Medical marijuana consultant certificate. The department of health (department) has adopted rule revisions to replace the term "marijuana" with "cannabis" in response to passage of 2SHB 1210 (chapter 16, Laws of 2022).

The department has adopted other clarifying changes such as changing terms such as "gender," citations, and spellings throughout both chapters. These updates are general corrections for accuracy and readability. These additional technical changes are not referenced in the bill and include removing gender pronouns as well as removing the requirement to identify gender in the medical marijuana authorization database. The changes will not affect the intent or meaning of the rule.

Citation of Rules Affected by this Order: Amending WAC 246-71-010, 246-71-020, 246-71-030, 246-71-040, 246-71-050, 246-71-080, 246-71-130, 246-72-010, 246-72-020, 246-72-030, 246-72-040, 246-72-100, and 246-72-110.

Statutory Authority for Adoption: RCW 69.51A.290 and 69.51A.230.

Adopted under notice filed as WSR 22-18-086 on September 6, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: February 10, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3901.1

Chapter 246-71 WAC
MEDICAL ((MARIJUANA)) CANNABIS AUTHORIZATION DATABASE

AMENDATORY SECTION (Amending WSR 19-22-047, filed 11/1/19, effective 11/1/19)

WAC 246-71-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorization" means a form developed by the department that is completed and signed by a qualifying patient's health care professional and printed on tamper-resistant paper approved by the Washington pharmacy quality assurance commission.

(2) "Compassionate care renewal" means a renewal of an authorization by a health care practitioner through the use of telemedicine if the health care practitioner determines that requiring the qualifying patient to attend an in-person physical examination would likely result in severe hardship to the qualifying patient because of the qualifying patient's physical or emotional condition. A compassionate care renewal of a qualifying patient's registration and recognition card also allows the qualifying patient's designated provider to renew the qualifying patient's registration in the database and recognition card without the qualifying patient being physically present at a retailer and without a new photograph being taken.

(3) "Consultant" means a person who holds a valid medical ((~~marijuana~~)) cannabis consultant certificate issued by the secretary under chapter 246-72 WAC and who is employed by a retail outlet with a medical ((~~marijuana~~)) cannabis endorsement.

(4) "Credential for access" or "credentials" means information, electronic device, or certificate provided by the department or the department's designee to a data requestor to electronically access the database. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(5) "Database" means the medical ((~~marijuana~~)) cannabis authorization database established under RCW 69.51A.230.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(8) "Dispenser" means a person authorized to dispense controlled substances other than ((~~marijuana~~)) cannabis under chapter 69.50 RCW.

(9) "Health care practitioner" or "authorizing health care practitioner," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physician's assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(10) "Official" means an official of a local, state, tribal, or federal law enforcement or prosecutorial agency.

(11) "Prescriber" means a person authorized to prescribe or dispense controlled substances other than ((~~marijuana~~)) cannabis under chapter 69.50 RCW.

(12) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(13) "Recognition card" means a card issued to qualifying patients and designated providers by a ((~~marijuana~~)) cannabis retailer with a medical ((~~marijuana~~)) cannabis endorsement that has entered them into the medical ((~~marijuana~~)) cannabis authorization database.

(14) "Retail outlet with a medical ((marijuana)) cannabis endorsement" or "endorsed outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable ((marijuana and marijuana-infused)) cannabis and cannabis-infused products to the public, and under RCW 69.50.375 to qualifying patients and designated providers for medical use.

(15) "Telemedicine" has the same meaning as the definition of that term adopted by the authorizing health care practitioner's disciplining authority, whether defined in rule or policy.

(16) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any state of the United States or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any state of the United States or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses.

A recognition card, whether current or expired, does not qualify as valid photographic identification.

(17) "Vendor" means the third-party administrator with whom the department has contracted to operate the database.

(18) "((~~WSCLB~~ [WSLCB])) WSLCB" means the Washington state liquor and cannabis board.

[Statutory Authority: 2019 c 203 and RCW 43.70.040. WSR 19-22-047, § 246-71-010, filed 11/1/19, effective 11/1/19. Statutory Authority: RCW 69.51A.230. WSR 16-11-086, § 246-71-010, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 19-22-047, filed 11/1/19, effective 11/1/19)

WAC 246-71-020 Adding qualifying patients and designated providers to the database. A qualifying patient or designated provider may take their authorization to an endorsed outlet to be entered into the database.

(1) Only a consultant employed by an endorsed outlet is allowed to enter a qualifying patient's or designated provider's information into the database.

(2) Consultants must register with the department to receive credentials to access the database. The process for registration will be established by the department.

(3) The department shall verify the consultant's identity and certificate status before providing credentials to access the database.

(4) The consultant shall access the database using the credentials issued by the department or the department's designee. If the credentials are lost or missing, or the security of the credentials is compromised, the consultant shall notify the department by telephone and in writing within one business day.

(5) The consultant shall ensure that the authorization form provided is valid, complete, unaltered, and meets all requirements specified in RCW 69.51A.030 and complies with the instructions on the form. "Street address" on the authorization form means the physical address for the person's residence where plants may be grown under RCW 69.51A.210. If any requirement is not met, or the form is altered or incomplete, the person cannot be entered into the database.

(6) The consultant shall verify the identity of every patient age ~~((eighteen))~~ 18 and older and every designated provider by inspecting the patient's or designated provider's valid photographic identification. Except for patients under the age of ~~((eighteen))~~ 18, or qualifying patients renewing under a compassionate care renewal as authorized in RCW 69.51A.030, a person cannot be entered into the database without valid photographic identification.

(7) In the event of an inexact match of names on the identification and the authorization, the consultant shall ensure that the patient or designated provider named on the authorization form is the same person presenting the authorization for entry into the database.

(8) The consultant shall check the database to ensure that a designated provider is not currently associated with a different patient in the database before associating the designated provider with a new patient in the database. If a designated provider is still associated with a different patient, the consultant cannot enter the designated provider into the database as associated with the new patient.

(9) The consultant shall enter the following information into the database for each patient and designated provider (unless specified below):

(a) The type of valid photographic identification verified and the unique number from the identification;

(b) Full legal name, as it appears on the valid photographic identification, including first name, middle initial, last name, and generational suffixes, if any;

(c) Date of birth;

(d) Actual physical address if different from the address on the identification;

~~((e))~~ ~~((Gender;))~~

~~((f))~~ Name of the authorizing health care practitioner;

~~((g))~~ (f) Authorizing health care practitioner's full license number;

~~((h))~~ (g) Business address of the authorizing health care practitioner;

~~((i))~~ (h) Telephone number of the authorizing health care practitioner, as listed on the authorization form;

~~((j))~~ (i) The patient's qualifying condition(s);

~~((k))~~ (j) For the designated provider only, the patient the designated provider is authorized to assist;

~~((l))~~ (k) The date the authorization was issued;

~~((m))~~ (l) The date the authorization expires; and

~~((n))~~ (m) The number of plants the patient is allowed to grow.

If the authorizing health care practitioner does not indicate a specific number, the presumptive number is six plants. The health care

practitioner cannot authorize more than (~~fifteen~~) 15 plants. An authorization for more than (~~fifteen~~) 15 plants is invalid.

(10) All requests for, uses of, and disclosures of information from the database by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

[Statutory Authority: 2019 c 203 and RCW 43.70.040. WSR 19-22-047, § 246-71-020, filed 11/1/19, effective 11/1/19. Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-71-020, filed 3/12/18, effective 4/12/18; WSR 16-11-086, § 246-71-020, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 19-22-047, filed 11/1/19, effective 11/1/19)

WAC 246-71-030 Renewing qualifying patients and designated providers in the database. (1) Recognition cards expire on the expiration date indicated on the patient's or designated provider's authorization. To be valid, an authorization must expire no later than:

(a) Twelve months after the date it was issued for patients age (~~eighteen~~) 18 and over;

(b) Twelve months after the date it was issued for designated providers; or

(c) Six months after the date it was issued for patients under the age of (~~eighteen~~) 18.

(2) To renew a recognition card a patient or designated provider must receive a new authorization following reexamination of the patient by a health care practitioner in-person or as authorized for compassionate care renewals as provided in RCW 69.51A.030. The qualifying patient or designated provider may take their new authorization to an endorsed outlet to be entered into the database.

(3) A qualifying patient's designated provider may renew the patient's registration and recognition card in the medical (~~marijuana~~) cannabis authorization database without the physical presence of the qualifying patient at the retailer if the authorization from the health care practitioner indicates that the qualifying patient qualifies for a compassionate care renewal as provided in RCW 69.51A.030. A qualifying patient receiving renewals under compassionate care renewal provisions is exempt from the requirement for a new photograph for the renewal.

(4) The procedures in WAC 246-71-020 must be used to enter the patient's or designated provider's new authorization into the database.

(5) The consultant shall ensure that the information required by WAC 246-71-020(9) is updated and accurate at the time of renewal.

[Statutory Authority: 2019 c 203 and RCW 43.70.040. WSR 19-22-047, § 246-71-030, filed 11/1/19, effective 11/1/19. Statutory Authority: RCW 69.51A.230. WSR 16-11-086, § 246-71-030, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 19-22-047, filed 11/1/19, effective 11/1/19)

- WAC 246-71-040 Requirements for recognition cards.** (1) An endorsed outlet must have the following equipment readily available and maintained in good working order:
- (a) A computer with internet access and capability of running a supported version of a common web browser;
 - (b) A digital camera with at least 10 megapixel resolution;
 - (c) A standard color printer able to print at least 300 dots per inch;
 - (d) A laminator; and
 - (e) A solid white, off-white, or light blue backdrop that is free of patterns, objects or textures, to use as the background for each picture.
- (2) When issuing a recognition card to a qualifying patient or designated provider, an endorsed outlet must comply with the following requirements:
- (a) Only a consultant employed by the endorsed outlet is allowed to print and create a card;
 - (b) The consultant shall take a picture of the face of the patient or designated provider at the same time they are entered into the database following the process specified by the department. Compassionate care renewals will use the qualifying patient's existing photograph and information retained securely in the database to generate a new recognition card for the patient. The endorsed outlet shall not otherwise retain or use the photograph or patient information for any purpose other than:
 - (i) Entering a qualifying patient or designated provider into the database;
 - (ii) Issuing a replacement card under WAC 246-71-120; or
 - (iii) Issuing a compassionate care renewal.
 - (c) The consultant shall create, print the card in full color, permanently laminate the card using a heat process, and issue it to the patient or designated provider following the process specified by the department; and
 - (d) The consultant shall return the authorization to the patient or designated provider. The endorsed outlet shall not retain a copy of the authorization.
- (3) The database vendor shall ensure recognition cards contain the following:
- (a) A randomly generated and unique identification number;
 - (b) The name of the patient or designated provider;
 - (c) For designated providers, the unique identification number of the patient they are assisting;
 - (d) A photograph of the patient or designated provider;
 - (e) The amounts of (~~marijuana~~) cannabis concentrates, usable (~~marijuana, or marijuana-infused~~) cannabis, or cannabis-infused products the patient or designated provider is authorized to purchase or obtain at an endorsed outlet;
 - (f) The number of plants the patient or designated provider is authorized to grow;
 - (g) The effective date and expiration date of the card;
 - (h) The name of the health care professional who issued the authorization; and
 - (i) Additional security features required by the department to ensure the validity of the card.

[Statutory Authority: 2019 c 203 and RCW 43.70.040. WSR 19-22-047, § 246-71-040, filed 11/1/19, effective 11/1/19. Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-71-040, filed 3/12/18, effective 4/12/18; WSR 16-11-086, § 246-71-040, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 16-11-086, filed 5/17/16, effective 6/17/16)

WAC 246-71-050 Database access by ((marijuana)) cannabis retailers with medical endorsements. Employees of an endorsed outlet may access the database to confirm the validity of a recognition card presented by a patient or designated provider.

(1) An employee of an endorsed outlet must register with the department to receive credentials for access. The registration process shall be established by the department.

(2) The department shall verify the employee's identity and employment status before providing credentials to access the database.

(3) The employee shall access the database using the credentials issued by the department or the department's designee. If the credentials issued are lost or missing, or the security of the credentials is compromised, the employee shall notify the department by telephone and in writing within one business day.

(4) An endorsed outlet owner or manager shall inform the department and the database vendor in writing immediately upon the termination of employment of an employee with access.

(5) All requests for, uses of, and disclosures of information from the database by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

[Statutory Authority: RCW 69.51A.230. WSR 16-11-086, § 246-71-050, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 16-11-086, filed 5/17/16, effective 6/17/16)

WAC 246-71-080 Database access by local, state, tribal, and federal law enforcement and prosecutorial officials. Officials who are engaged in a bona fide specific investigation of suspected ((~~marijuana-related~~)) cannabis-related activity that may be illegal under Washington state law may access the database to confirm the validity of the recognition card of a patient or designated provider.

(1) Officials who want access to the database shall register with the department in order to receive credentials for access. The registration process shall be established by the department.

(2) The department or the department's designee shall verify the official's identity and position before providing credentials to access the database.

(3) Officials shall access the database using the credentials issued by the department or the department's designee. If the credentials issued are lost or missing, or the security of the credentials

is compromised, the official shall notify the department or its designee by telephone and in writing within one business day.

(4) Officials with an active database account must inform the department and the database vendor in writing immediately when they no longer hold a position as a law enforcement or prosecutorial official.

(5) All requests for, uses of, and disclosures of information from the database by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

[Statutory Authority: RCW 69.51A.230. WSR 16-11-086, § 246-71-080, filed 5/17/16, effective 6/17/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-71-130 Removal of a qualifying patient or designated provider from the database. (1) The vendor must automatically deactivate patient and designated provider records in the database upon expiration of a recognition card.

(2) Patients and designated providers may request to be deactivated in the database before the expiration of their recognition card using the process established by the department.

(3) The authorizing health care practitioner may request deactivation of a patient or designated provider from the database if the patient no longer qualifies for the medical use of ((marijuana)) cannabis. This request must be made using the process established by the department.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-71-130, filed 3/12/18, effective 4/12/18; WSR 16-11-086, § 246-71-130, filed 5/17/16, effective 6/17/16.]

OTS-3902.1

**Chapter 246-72 WAC
MEDICAL ((MARIJUANA)) CANNABIS CONSULTANT CERTIFICATE**

AMENDATORY SECTION (Amending WSR 22-11-015, filed 5/9/22, effective 6/9/22)

WAC 246-72-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved training program" means a school, college, or program approved by the secretary that meets the requirements of this chapter.

- (2) "Certificate holder" means a person holding a valid medical ((marijuana)) cannabis consultant certificate issued by the secretary under chapter 69.51A RCW and this chapter.
- (3) "Customer" means any patron of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.
- (4) "Department" means the Washington state department of health.
- (5) "Designated provider" means the same as defined in RCW 69.51A.010.
- (6) "~~((Marijuana))~~ Cannabis product" means ~~((marijuana, marijuana))~~ cannabis, cannabis concentrates, usable ~~((marijuana))~~ cannabis, and ~~((marijuana-infused))~~ cannabis-infused products as defined in RCW 69.50.101.
- (7) "Qualifying patient" or "patient" means the same as defined in RCW 69.51A.010.
- (8) "Secretary" means the secretary of the department of health or the secretary's designee.

[Statutory Authority: RCW 69.51A.290. WSR 22-11-015, § 246-72-010, filed 5/9/22, effective 6/9/22; WSR 16-07-086, § 246-72-010, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-020 Certificate requirements. An applicant for a medical ((marijuana)) cannabis consultant certificate must submit to the department:

- (1) A completed initial application on forms provided by the department;
- (2) Fees required under WAC ~~((246-72-110))~~ 246-72-990;
- (3) Certificate of successful completion from an approved training program;
- (4) Proof of being age ~~((twenty-one))~~ 21 or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;
- (5) Proof of current CPR certification from a course requiring completion of both a written and skills demonstration test; and
- (6) Any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-020, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-020, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 22-11-015, filed 5/9/22, effective 6/9/22)

WAC 246-72-030 Practice parameters. (1) A certificate holder may only provide services when acting in the capacity of an owner, employee, or volunteer of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

- (2) A certificate holder may:

(a) Perform regular job duties and business functions including, but not limited to, assisting a customer with the selection of ((~~marijuana~~)) cannabis product and other items sold at the retail outlet;

(b) Assist a qualifying patient or designated provider with the following:

(i) Selection of ((~~marijuana~~)) cannabis products and other items sold at the retail outlet that may benefit the qualifying patient's terminal or debilitating medical condition;

(ii) Understanding the risks and benefits of ((~~marijuana~~)) cannabis products and other items sold at the retail outlet;

(iii) Understanding the risks and benefits of methods of administration of ((~~marijuana~~)) cannabis products sold at the retail outlet. Whenever practicable, a certificate holder shall encourage methods of administration other than smoking;

(iv) Advice about the safe handling and storage of ((~~marijuana~~)) cannabis products, including strategies to reduce access by minors;

(v) Instruction and demonstration about proper use and application of ((~~marijuana~~)) cannabis products; and

(vi) Processing the medical ((~~marijuana~~)) cannabis authorization form for the purpose of adding the qualifying patient or designated provider to the database according to WAC 246-71-020.

(3) When discussing a ((~~marijuana~~)) cannabis product with a qualifying patient or their designated provider, a certificate holder shall refer to the product using the cannabinoid profile labeling required by the Washington state liquor and cannabis board in addition to the represented strain name.

(4) A certificate holder shall not:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of ((~~marijuana~~)) cannabis products or any other means or instrumentality;

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of ((~~marijuana~~)) cannabis products;

(c) Solicit or accept any form of remuneration directly or indirectly, overtly or covertly, in cash or any other form in return for recommending a certain product, producer, processor, clinic, or health care practitioner;

(d) Provide medical ((~~marijuana~~)) cannabis consultant services at any location other than at retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375 for which the certificate holder serves as an owner, employee, or volunteer;

(e) Create their own recognition card pursuant to chapter 246-71 WAC;

(f) Provide free samples of a ((~~marijuana~~)) cannabis product to a customer except pursuant to RCW 69.50.375;

(g) Open or allow a customer, including qualifying patients and designated providers to open a ((~~marijuana~~)) cannabis product on the premises; or

(h) Consume or allow a customer, including qualifying patients and designated providers, to consume any ((~~marijuana~~)) cannabis product on the premises.

[Statutory Authority: RCW 69.51A.290. WSR 22-11-015, § 246-72-030, filed 5/9/22, effective 6/9/22. Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-030, filed 3/12/18, effective 4/12/18. Statu-

tory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-030, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-040 Display of certificate. (1) A certificate holder shall display (~~(his or her)~~) their certificate in (~~(his or her)~~) their principal place of business in a place and manner visible to customers.

(2) A certificate holder who owns, is employed by, or volunteers at more than one business location shall display a duplicate certificate or an unaltered photocopy of (~~(his or her)~~) their certificate in each business location in a place and manner visible to customers.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-040, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-040, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 22-11-015, filed 5/9/22, effective 6/9/22)

WAC 246-72-100 Continuing education. (1) A certificate holder must complete a minimum of 10 hours of continuing education each year in order to renew the certificate.

(2) Two of the 10 hours must be successful completion of a two-hour continuing education course offered by the department.

(3) Eight of the 10 continuing education hours may be earned through seminars, lectures, workshops, and professional conferences. Continuing education credits may be earned through in-person, distance learning, or self-study.

(a) Distance learning includes correspondence courses, webinars, audio/video broadcasting, audio/video teleconferencing e-learning, or webcasts.

(b) Self-study includes the use of multimedia devices or the study of books, research materials, (~~(marijuana)~~) cannabis industry tours or other publications. To receive credit for self-study, the credential holder shall draft and provide a one page, single spaced, 12-point font synopsis of what was learned. The time spent writing the synopsis is not reportable. Two hours of credit is allowed per report, and no more than one report may be submitted per reporting period.

(4) (a) Acceptable continuing education topics for the hours required in subsection (3) of this section include:

(i) Washington state laws and rules relating to (~~(marijuana)~~) cannabis;

(ii) Scientific research, studies, or similar information about (~~(marijuana)~~) cannabis;

(iii) Addiction and substance abuse;

(iv) Patient communication skills;

(v) Professional ethics and values;

(vi) Pesticides and chemicals in the context of (~~(marijuana)~~) cannabis agriculture; or

(vii) Qualifying medical conditions.

(b) Continuing education topics may not include:

(i) Business and management courses;

(ii) Health care training unrelated to ((marijuana)) cannabis; or

(iii) Any topic unrelated to the practice parameters of a medical ((marijuana)) cannabis consultant.

(5) Continuing education hours may not be carried over from one reporting period to another.

(6) A certificate holder shall provide acceptable documentation of completion of continuing education hours upon request of the secretary or an audit. Acceptable forms of documentation include:

(a) Transcripts;

(b) Certificate of completion;

(c) If applicable for self-study, a type-written essay in accordance with subsection (3)(b) of this section; or

(d) Other formal documentation, which include the following:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) Course provider's or instructor's name(s); and

(vi) Signature of the program sponsor or course instructor. Distance learning courses and self-study activities outlined in subsection (3)(b) of this section are exempt from the signature requirement.

(7) A certificate holder shall verify compliance by submitting a signed declaration of compliance.

(8) At the secretary's discretion, up to 25 percent of certificate holders may be randomly audited for continuing education compliance after a credential is renewed. If identified for an audit, it is the certificate holder's responsibility to submit documentation of completed continuing education activities at the time of the audit. Failure to comply with the audit documentation request or failure to supply acceptable documentation within 60 days may result in licensing action, up to and including suspension or revocation of the certificate.

(9) A certificate holder must maintain records of continuing education completion for at least four years.

[Statutory Authority: RCW 69.51A.290. WSR 22-11-015, § 246-72-100, filed 5/9/22, effective 6/9/22; WSR 16-07-086, § 246-72-100, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 22-11-015, filed 5/9/22, effective 6/9/22)

WAC 246-72-110 Training program requirements. (1) A training program must include:

(a) A minimum of 20 total instruction hours in the following subjects:

(i) A minimum of five hours of instruction on Washington state laws and rules relating to ((marijuana)) cannabis to include, but not be limited to, the following topics:

(A) Qualifying patient and designated provider cannabis home grow laws;

(B) Patient and designated provider ((marijuana)) cannabis purchase and possession limits;

- (C) ((Marijuana)) Cannabis product compliance, quality assurance testing, and labeling requirements for recreational and compliant ((marijuana)) cannabis products, including pesticide labeling as defined under chapter 246-70 WAC;
- (D) Pesticide use on cannabis products; and
- (E) The medical ((marijuana)) cannabis authorization process;
- (ii) A minimum of two hours on qualifying conditions and the common symptoms of each;
- (iii) A minimum of two hours on the short- and long-term positive and negative effects of cannabinoids;
- (iv) A minimum of five hours on products that may benefit qualifying patients based on the patient's condition, any potential contraindications and the risks and benefits of various routes of administration;
- (v) A minimum of two hours on safe handling of ((marijuana)) cannabis products, including strategies to reduce access by minors;
- (vi) A minimum of two hours on ethics and patient privacy and rights; and
- (vii) A minimum of two hours on the risks and warning signs of overuse, abuse and addiction.
- (b) An examination comprised of at least five questions for each hour of instruction must be given for each subject. The applicant must pass the examination for each subject with a minimum score of 70 percent. Questions must be randomly selected from a sufficient supply of questions to ensure the validity of the examination. The secretary reserves the right to approve or deny individual questions and answers.
- (2) Training may be provided in-person or electronically. If the training is provided electronically, students must have real-time access to the instructor during at least half of the instruction hours for each subject.
- (3) Instructors must have demonstrated knowledge and experience related to ((marijuana)) cannabis and to the subject matter, and hold:
- (a) An active license to practice as a health care professional as defined in RCW 69.51A.010(5). A licensee whose credential is placed under a disciplinary order must request review and secretary approval to begin or continue as an instructor for the approved training program;
- (b) An active license to practice law in the state of Washington;
- (c) A bachelor's degree or higher from an accredited college or university in:
- (i) Agriculture, botany, or horticulture;
- (ii) Nursing, provided the instructor also holds an active license to practice as a registered nurse under chapter 18.79 RCW; or
- (iii) Any other discipline, provided the intended instructor also submits a curriculum vitae with a written statement which demonstrates at least seven years of experience in the regulated cannabis industry.
- (4) An owner, agent, principal, or instructor of a training program shall not have a direct or indirect financial interest in a ((marijuana)) cannabis business licensed by the Washington state liquor and cannabis board under chapter 69.50 RCW.

[Statutory Authority: RCW 69.51A.290. WSR 22-11-015, § 246-72-110, filed 5/9/22, effective 6/9/22. Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-110, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-110, filed 3/17/16, effective 3/18/16.]

WSR 23-05-062
PERMANENT RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES

[Filed February 13, 2023, 10:28 a.m., effective March 16, 2023]

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

Purpose: The proposed amendment adds a provision allowing the office of minority and women's business enterprises (OMWBE) to waive processing fees for businesses applying for certification. This change will give OMWBE the flexibility to waive fees to promote certification and reduce barriers for businesses, increasing the number of certified minority- and women-owned businesses in Washington.

Citation of Rules Affected by this Order: Amending WAC 326-20-125.

Statutory Authority for Adoption: RCW 39.19.210, 39.19.030.

Adopted under notice filed as WSR 22-20-036 on September 26, 2022.

Date Adopted: February 13, 2023.

Julie Bracken
Public Records Officer
Records Manager
Rules Coordinator

OTS-4120.1

AMENDATORY SECTION (Amending WSR 04-08-074, filed 4/5/04, effective 5/6/04)

WAC 326-20-125 Processing fee. The office shall charge a nonrefundable fee for certification or recertification based upon the legal organizational structure of the business, as follows: Fifty dollars for a sole proprietorship, (~~seventy-five dollars~~) \$75 for a partnership (general or limited), and (~~one hundred dollars~~) \$100 for all other legal organizational structures; e.g., corporation or limited liability company: Provided, however, That the office shall only charge a (~~twenty-five dollar~~) \$25 fee when the application requests DBE-only certification or recertification for all business legal organizational structures. The office shall also charge a nonrefundable (~~twenty-dollar~~) \$20 fee for processing annual updates for all business legal organizational structures. The business must submit the fee with the application for certification, recertification, or annual update. The business applying for DBE-only certification may request a waiver of the fee. The request for fee waiver must be submitted to the office in writing. The office will review the request and make a determination in accordance with the Washington state department of transportation (WSDOT) DBE plan. An application is not deemed to be received by the office until the required fee is received by the office or the request of waiver of the fee has been approved by the office. The office may waive processing fees for the purpose of reducing barriers to certification. When the office waives fees, the office will publish notice of the conditions and duration of the waiver prominently on its website.

[Statutory Authority: RCW 39.19.210. WSR 04-08-074, § 326-20-125, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030. WSR 94-11-115, § 326-20-125, filed 5/18/94, effective 6/18/94. Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-20-125, filed 8/3/93, effective 9/3/93.]

WSR 23-05-073
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 14, 2023, 8:35 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: This rule making adopts amendments to the qualifications for journey level electrician examinations under WAC 296-46B-945. Amendments to this rule are required to implement SSB 6126 (chapter 249, Laws of 2018). SSB 6126 enacted apprenticeship requirements for journey level electrician examination candidates that take effect July 1, 2023.

SSB 6126 gives the department of labor and industries (L&I) the authority, until July 1, 2025, to permit applicants that have obtained experience and training equivalent to a journey level apprenticeship program to take the examination, if the applicant has "good cause" for not completing the minimum hours of work applicable on July 1, 2023 (RCW 19.28.195). L&I is authorized to exercise this discretion until July 1, 2025.

Under the adopted rule, L&I is exercising the discretion provided in the law to allow temporary alternative pathways to qualify for the 01 journey level electrician examination through a "good cause" exemption.

The adopted rule: Removes language that applies to qualifying for 01 journey level electrician examination with on-the-job training that becomes obsolete on July 1, 2023, due to passage of SSB 6126.

- Provides exceptions to apprenticeship completion requirements to qualify for 01 journey level electrician examination for "good cause" until July 1, 2025. Due to the universal effects of the COVID-19 pandemic, "good cause" will be granted until July 1, 2025, to journey level examination candidates who meet the experience identified under the exceptions. The adopted changes for the exceptions include:
 - o Modified requirements to qualify for the 01 journey level electrician examination for apprentices registered in chapter 49.04 RCW programs. Allows apprentices to qualify for examination before completing an apprenticeship program once they complete the education and work experience required of the apprenticeship program.
 - o Recognizing examination-based state-licensed electricians from other jurisdictions that require 8,000 hours of experience (4,000 hours must be new commercial or industrial installations) to qualify for the 01 journey level electrician examination.
 - o Recognizing individuals with 8,000 hours of electrical experience gained in a construction battalion while serving in the armed forces of the United States to qualify for the 01 journey level electrician examination.
 - o Recognizing individuals from other jurisdictions that have 16,000 hours working in the electrical construction trade (4,000 hours must be commercial or industrial installations) to qualify for the 01 journey level electrician examination. Individuals under this provision include those who work in states that have no licensing requirements for electricians or states where licensing is not examination based.

- o Recognizing individuals with 4,000 hours performing industrial or commercial installations accrued prior to July 1, 2023. The individual can continue accruing remaining specialty experience and qualify for the journey level electrician examination without joining an apprenticeship program.
- Includes how L&I will approve qualified hours gained by applicants for the journey level examination under the good cause exemptions.
- Updates language for general housekeeping, such as reference corrections, renumbering, formatting, replacing written numbers with numerals, etc.

Citation of Rules Affected by this Order: Amending WAC 296-46B-945.

Statutory Authority for Adoption: SSB 6126, chapter 249, Laws of 2018; and chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.191 and 19.28.251.

Adopted under notice filed as WSR 22-23-153 on November 22, 2022.

A final cost-benefit analysis is available by contacting Alicia Curry, L&I, Field Services and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website www.Lni.wa.gov.

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

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

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

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

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

Date Adopted: February 14, 2023.

Joel Sacks
Director

OTS-4124.7

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

WAC 296-46B-945 Qualifying for master, journey level, specialty electrician examinations. (1) General.

(a) All applicants must be at least (~~sixteen~~) 16 years of age.

(b) All applicants, from in or out of state, must demonstrate the completion of basic trainee classes described in WAC 296-46B-970 (4)(c)(ii)(D).

(i) Twenty-four hours where (~~two thousand~~) 2,000 or more; but less than (~~four thousand~~) 4,000 hours of work experience is required.

- (ii) Forty-eight hours where ((four thousand)) 4,000 or more; but less than ((six thousand)) 6,000 hours of work experience is required.
- (iii) Seventy-two hours where ((six thousand)) 6,000 or more; but less than ((eight thousand)) 8,000 hours of work experience is required.
- (iv) Ninety-six hours where ((eight thousand)) 8,000 or more of work experience is required.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1) ((~~(d) or (e)~~)) (a) or (b).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the journey level electrician competency examination.

(4) ((Until July 1, 2023, an individual may take the journey level electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journey level, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journey level electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journey level electrician or journey level electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC ~~296-46B-920(2)~~.

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journey level or journey level electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journey level electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journey level electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Beginning July 1, 2023)) Except as provided under subsection (5) of this section, to qualify to take the journey level electrician's certificate of competency examination, an individual must have successfully completed an apprenticeship program approved under chapter 49.04 RCW or equivalent apprenticeship program approved by the depart-

ment for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of (~~eight thousand~~) 8,000 hours. Four thousand of the hours must be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of (~~four thousand~~) 4,000 hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty.

Electrical construction training hours gained in specialties requiring less than two years (i.e., (~~four thousand~~) 4,000 hours) will not be credited towards qualification for a journey level electrician examination.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

(5) (a) Until July 1, 2025, under temporary authority provided by RCW 19.28.195 and due to the universal effects of the COVID-19 pandemic, candidates are eligible to qualify for a journey level certification examination after department review and approval without completing an apprenticeship required under subsection (4) of this section if they have:

(i) Successfully completed the work experience and education requirements of an 8,000 hour electrical construction trade apprenticeship program approved under chapter 49.04 RCW. Four thousand of the hours shall be new industrial or commercial installations.

(ii) A journey level electrician certificate obtained through examination by another state licensing jurisdiction in the United States that requires at least 8,000 hours of supervised experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW. Four thousand of the hours shall be new industrial or commercial installations. All experience applied toward qualifying for examination must be experience gained in the state that issued the certificate or military service or both. Credit allowed for military service shall not exceed that allowed in (a) (iii) of this subsection and subsection (12) of this section. Documentation of experience shall be the same as required in subsection (10) of this section;

(iii) Eight thousand hours of experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW while serving in a construction battalion in the armed forces of the United States.

(iv) Sixteen thousand hours of out-of-state experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW. Four thousand of the hours shall be new industrial or commercial installations. Work experience documentation submitted to prove the candidate has worked the hours claimed must be an original notarized letter of work experience accompanied by documentation, see subsection (8) of this section, that can be used to verify the individual has worked the hours being requested. Documentation must be provided by:

- (A) An appropriately state-licensed electrical contractor;
- (B) Registered apprenticeship training director;
- (C) Nationally recognized contractor/labor organization; or
- (D) The individual's lawful employer.

(v) Before July 1, 2025, acquired 8,000 hours of experience as follows:

(A) Before July 1, 2023, they lawfully worked in the electrical construction trade for at least 4,000 hours while performing new industrial or commercial installation work not included for specialties in WAC 296-46B-920(2). Proof of hours worked in Washington must be received in accordance with WAC 296-46B-942 (8)(d); and

(B) Before July 1, 2025, they lawfully gained the balance of 8,000 hours of experience referenced under (a)(v) of this subsection through one or more of following:

(I) Experience performing work described in the following specialties defined in WAC 296-46B-920(2): residential (02); pump and irrigation (03); signs (04); limited energy system (06); HVAC/refrigeration (06A); or nonresidential maintenance (07). Proof of hours worked in Washington must be received in accordance with WAC 296-46B-942 (8)(d).

(II) Experience hours gained through completion of a two-year electrical training program approved under WAC 296-46B-971. Military experience as allowed in subsection (12) of this section shall be allowed for journey level examination candidates.

(III) Experience in another country as allowed in subsection (13) of this section.

(b) Candidates shall only qualify for examination under temporary allowances in (a) of this subsection if their applications for examination and supporting documentation are received by the department before July 1, 2025.

Qualifying for a specialty electrician certificate of competency or examination.

~~((+5))~~ (6) After review and approval by the department, an individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journey level electrician, journey level electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

| Specialty | Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾ | Minimum Hours of Work Experience Required for Certification |
|--|--|---|
| Residential certificate (02) | 4,000 ⁽³⁾ | 4,000 |
| Pump and irrigation certificate (03) | 4,000 ⁽³⁾ | 4,000 |
| Domestic pump certificate (03A) | 720 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Signs certificate (04) | 4,000 ⁽³⁾ | 4,000 |
| Limited energy system certificate (06) | 4,000 ⁽³⁾ | 4,000 |
| HVAC/refrigeration system certificate (06A) | 4,000 ⁽³⁾ | 4,000 ⁽⁷⁾ |
| HVAC/refrigeration – Restricted (06B) | 1,000 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Nonresidential maintenance certificate (07) | 4,000 ⁽³⁾ | 4,000 |
| Nonresidential lighting maintenance and lighting retrofit certificate (07A) | 720 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |

| Specialty | Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾ | Minimum Hours of Work Experience Required for Certification |
|--|--|---|
| Residential maintenance certificate (07B) | 720 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Restricted nonresidential maintenance certificate (07C) | 1,000 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Appliance repair certificate (07D) | 720 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Equipment repair certificate (07E) | 1,000 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |
| Door, gate, and similar systems certificate (10) | 720 ⁽¹⁾⁽²⁾ | 2,000 ⁽⁶⁾ |

- Notes:
- (1) Until the examination is successfully completed, the trainee must work under ~~((one hundred))~~ 100 percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
 - (2) The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a ~~((seventy-five))~~ 75 percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
 - (3) This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
 - (4) The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
 - (5) Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)~~((e))~~ (d)(ii).
 - (6) Electrical construction training hours gained in specialties requiring ~~((two thousand))~~ 2,000 hours or less for certification will not be credited towards qualification for journey level electrician or any of the ~~((four thousand))~~ 4,000 hour specialties, except as allowed by ⁽⁷⁾, below.
 - (7) The ~~((two thousand))~~ 2,000 minimum hours of work experience required for certification as an HVAC/refrigeration-restricted **(06B)** specialty electrician may be credited as ~~((two thousand))~~ 2,000 hours towards the ~~((four thousand))~~ 4,000 minimum hours of work experience required for certification as an HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.
 - (8) Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1) ~~((e))~~ (d)(iv).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

~~((6))~~ (7) After review and approval by the department, an individual may be granted work experience credit to take the ~~((journey level/specialty))~~ specialty electrician's competency examination when an original notarized letter of work experience accompanied by verifiable documentation is provided. ~~((-))~~ See subsection ~~((7))~~ (8) of this section. For journey level competency examination candidates, see subsection (4) of this section for requirements.

For the purposes of this section, exempt work does not include work performed on property owned, in whole or part, by the individual seeking credit.

All exempt individuals must have a valid electrical training certificate when working to gain electrical work experience.

Work experience requested by an individual for telecommunications work must be gained while working for **(01)** general electrical, **(02)** residential, or **(06)** limited energy system electrical contractors as allowed by those scopes of work. When the work was performed, the individual must have a valid training certificate, be under the supervision of an appropriately certified journey level, residential or limited energy electrician, and be in compliance with RCW 19.28.191.

General - Qualifying hours gained by applicants seeking work experience credit without a Washington electrician training certificate.

~~((7))~~ (8) The type of on-the-job work experience must be similar to the credit being applied for and lawfully gained in the state or other entity where the work was performed. The individual must submit verifiable documentation (e.g., payroll, time sheets, permits, supervision, etc.) that the department may use to ascertain the type of work performed and the number of hours worked for each type (i.e., specialty) of work.

Training hours credited for specialties requiring less than two years (i.e., ~~(four thousand))~~ 4,000 hours) may not be credited towards qualification for general journey level electrician.

The documentation must include a complete description of the individual's usual duties with percentages attributed to each type (e.g., wiring, material handling, shop, low voltage, etc.)

The department may reduce the number of hours allowed if the:

(a) Individual did not have supervision during the training period when supervision was required by the jurisdiction where the training occurred;

(b) Training hours are not related to electrical construction;

(c) Training hours are not related to the specialty being applied for;

(d) Documentation submitted by the individual does not fully verify the requested work experience; or

(e) Work credit was not lawfully gained.

Training school credit.

~~((8))~~ (9) No more than ~~(fifty))~~ 50 percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring ~~(two thousand))~~ 2,000 hours of minimum required work experience may receive no more than ~~(one thousand))~~ 1,000 hours credit from an electrical construction training program).

See RCW 19.28.191 (1) ~~((h))~~ (e) for training school credit allowed for journey level applicants.

See WAC 296-46B-971 for additional information on training schools.

Qualifying for the journey level/specialty electrician competency examination when work was performed in a state requiring electrician certification for the work performed.

~~((9))~~ (10) After review and approval by the department, an individual may be granted on-the-job work experience towards qualifying to take the ~~((journey level/specialty))~~ specialty electrician's competency examination for hours worked in the other state when the state certifies to the department:

(a) The type and number of hours of work performed within the state. Credit will not be allowed for work not done within the certifying state.

(b) That the work was legally performed under the other state's licensing and certification requirements; and

(c) The other state's certificate of competency was obtained by examination.

If the experience is for other than a new commercial or industrial installation, the individual must identify the specialty credit desired and provide verifiable documentation identifying the other state's allowed scope of work for the specialty, see subsection

~~((7))~~ (8) of this section.

For journey level competency examination candidates, see subsection (4) of this section for requirements.

Qualifying for the journey level/specialty electrician competency examination when work was performed in a state that does not require electrician certification for the work performed.

~~((10))~~ (11) After review and approval by the department, an individual may be granted work experience credit to take the ~~((journey level/specialty))~~ specialty electrician's competency examination when an original notarized letter of work experience accompanied by documentation, see subsection ~~((7))~~ (8) of this section, that can be used to verify the individual has worked the hours being requested is provided by:

- (a) An appropriately state licensed electrical contractor;
- (b) Registered apprenticeship training director;
- (c) Nationally recognized contractor/labor organization; or
- (d) The individual's lawful employer.

For journey level competency examination candidates, see subsection (4) of this section for requirements.

Military experience.

~~((11))~~ (12) After review and approval by the department, an individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a ~~((journey level or))~~ specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than ~~((fifty))~~ 50 percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

For allowances for crediting military experience toward qualifying for a journey level competency examination, see temporary allowance in subsection (5)(a)(iii) of this section effective until July 1, 2025. After that date, see allowance in RCW 19.28.191 (1)(e) (effective July 1, 2023).

Experience in another country.

~~((12))~~ (13) After review and approval by the department, and if an individual has a journey level electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for ~~((four thousand))~~ 4,000 hours of the specialty credit allowed towards the qualification to take the Washington journey level electrician examination.

No more than ~~((two years))~~ 4,000 hours of the required training to become a Washington journey level electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of ~~((four thousand))~~ 4,000 hours credit that may be allowed by this subsection, an additional ~~((four thousand))~~ 4,000 hours of new commercial/industrial experience must be obtained using a training certificate in the state while registered in a journey level electrician apprenticeship program required by RCW

19.28.161 (2)(a)(i) (effective July 1, 2023) under the supervision of a master journey level electrician or journey level electrician.

Documentation substantiating the individual's out of country experience must be submitted in English.

~~((13))~~ (14) Out of country experience credit is not allowed toward a specialty electrician certificate.

~~((14))~~ (15) Canadian journey person construction electricians with at least four years of electrical construction training who have obtained a construction electrician Red Seal endorsement by successfully completing a Red Seal examination are eligible to take the examination for the journey level electrician certificate of competency if they have possessed a Red Seal endorsement for one year.

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-945, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW. WSR 14-11-075, § 296-46B-945, filed 5/20/14, effective 7/1/14; WSR 13-03-128, § 296-46B-945, filed 1/22/13, effective 3/1/13. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-945, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-945, filed 11/25/08, effective 12/31/08; WSR 06-24-041, § 296-46B-945, filed 11/30/06, effective 12/31/06; WSR 06-05-028, § 296-46B-945, filed 2/7/06, effective 5/1/06; WSR 05-10-024, § 296-46B-945, filed 4/26/05, effective 6/30/05. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2003 c 399, 2003 c 211, 2003 c 78, and 2003 c 242. WSR 04-12-049, § 296-46B-945, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2002 c 249, chapters 34.05 and 19.28 RCW. WSR 03-09-111, § 296-46B-945, filed 4/22/03, effective 4/22/03.]

WSR 23-05-074
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 14, 2023, 8:36 a.m., effective March 17, 2023]

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

Purpose: The 2022 legislative session amended RCW 51.28.040 Application for change in compensation, by passing SHB 1902. As a result of the legislation, WAC 296-20-097 Reopenings, needed amending to be consistent with the change in the statute.

Based on the legislation passed in 2022 adjusting the number of days prior to receipt of a reopening application for workers' compensation claim, the department or self-insured employer can consider setting the effective date from 60 days up to 120 days when the provider does not complete and file the application within 60 days of medical services, **and** the worker submits the application within 30 days of medical services without medical completion. The worker must prove the application was received by the department or self-insurer. Allowing the date to be set beyond 60 days up to 120 days may result in additional time-loss or medical benefits.

Citation of Rules Affected by this Order: Amending WAC 296-20-097.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Adopted under notice filed as WSR 22-24-087 on December 6, 2022.

Changes Other than Editing from Proposed to Adopted Version: One minor change was made to the title of the form referenced in the rule from "Application to Reopen Claim for Aggravation of Condition" to "Application to Reopen Claim Due to Worsening of Condition."

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

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

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

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

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

Date Adopted: February 14, 2023.

Joel Sacks
Director

OTS-4146.2

AMENDATORY SECTION (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

WAC 296-20-097 Reopenings. When a claim has been closed by the department or self-insurer by written order and notice for ((~~sixty~~))

60 days, submission of a formal "application to reopen claim ((for ag-
gravation)) due to worsening of condition" form # F242-079-000 is
((necessary)) preferred. The department or self-insurer is responsible
for customary charges for examinations, diagnostic studies, and deter-
mining whether or not time-loss is payable regardless of the final ac-
tion taken on the reopening application. Reopening applications should
be submitted immediately. When reopening is granted, the department or
self-insurer can pay time loss and treatment benefits only for a peri-
od not to exceed ((sixty)) 60 days prior to date the application is
received by the department or self-insurer. The 60 days may be exten-
ded up to 120 days consistent with RCW 51.28.040. Necessary treatment
should not be deferred pending a department or self-insurer adjudica-
tion decision. However, should reopening be denied treatment costs be-
come the financial responsibility of the worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, and Title 51 RCW. WSR
08-24-047, § 296-20-097, filed 11/25/08, effective 12/26/08. Statutory
Authority: RCW 51.32.190 and 51.32.210. WSR 90-22-054, § 296-20-097,
filed 11/5/90, effective 12/6/90. Statutory Authority: RCW
51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order
81-28), § 296-20-097, filed 11/30/81, effective 1/1/82; WSR 81-01-100
(Order 80-29), § 296-20-097, filed 12/23/80, effective 3/1/81; Order
71-6, § 296-20-097, filed 6/1/71; Order 70-12, § 296-20-095 (codified
as WAC 296-20-097), filed 12/1/70, effective 1/1/71. Formerly WAC
296-20-090.]

WSR 23-05-075
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 14, 2023, 8:38 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: The purpose of this rule adoption is to implement requirements of 2022's ESHB 2076 concerning rights and obligations of transportation network company (TNC) drivers and transportation network companies. This new law provides workers' compensation insurance coverage to TNC drivers during dispatch platform time and passenger platform time, among other rights and protections.

Drivers previously exempt from workers' compensation coverage will be covered starting January 1, 2023. TNCs will report and pay for coverage. This rule adoption amends the reporting and classification rules to address the new requirements.

The department of labor and industries (L&I) is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035).

Citation of Rules Affected by this Order: Amending WAC 296-17-35205 and 296-17A-1401.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 22-24-088 on December 6, 2022.

Changes Other than Editing from Proposed to Adopted Version: As a result of stakeholder collaboration with L&I, we have made an adjustment to the proposed "special note" in WAC 296-17-35205. This change reduces the number of elements L&I may request in supplemental quarterly reports from driver names, dispatch platform start and end times, and passenger platform start and end times to a total of dispatch and passenger platform time for each driver for the quarter.

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

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

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

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

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

Date Adopted: February 14, 2023.

Joel Sacks
Director

OTS-4174.2

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities; and ~~((commercial)) transportation ((service drivers)) network companies.~~ (1) ~~((When does the law providing for)) **Non-mandatory coverage ((begin?** The law takes effect July 24, 2015, and exempts)). The following individuals are excluded from mandatory coverage, ((who)) but may elect coverage as authorized under RCW 51.32.030:~~

~~((a)) ((Drivers providing commercial transportation services (CTS), also sometimes known as transportation network company services (TNCs), as defined in Title 48 RCW;~~

~~((b)) For-hire vehicle operators as defined under chapter 46.72 RCW who own the for-hire vehicle or lease it from others;~~

~~((c)) ((e)) (b) Limousine drivers as defined under chapter 46.72A RCW who own the limousine or lease it from others; and~~

~~((d)) (c) Taxicab operators, as defined under chapter 81.72 RCW, who own the taxicab or lease it from others.~~

(2) ~~((What are the special rules for these drivers and entities? If you are exempt from mandatory coverage as described in subsection (1) of this section:~~

~~((a)) You may elect to buy workers' compensation insurance to cover yourself as provided by RCW 51.32.030 and as defined in WAC 296-17-31007 Owner coverage.~~

~~((b)) For the reporting period July 1, 2015, through July 23, 2015, if we do not receive an application for optional coverage from you by July 23, 2015, you must report your mandatory coverage on a prorated basis using one of these methods:~~

~~((i)) For flat rate by driver, one hundred twenty hours per driver;~~

~~((ii)) For flat rate by vehicle, two hundred forty hours per vehicle;~~

~~((iii)) Actual hours worked.~~

(3) ~~What are the quarterly reporting options for)) **Mandatory coverage.**~~

(a) Taxi, for-hire, limousine, and cabulance entities with employees must provide coverage for their workers.

(b) Transportation network companies (TNC) as defined in Title 49 RCW are required to report and pay premium to cover their drivers for the time the driver is in dispatch platform time or passenger platform time on the digital application. Drivers are only covered for a work-place injury or illness during these qualifying times.

(3) Quarterly reporting.

(a) Taxi drivers and entities ((,)) for-hire drivers and entities ((, and CTS drivers? When reporting for an entire quarter)):

~~((a)) If you are)) (i) An exempt driver who has elected coverage, ~~((you))~~ may report ~~((you))~~ exposure under either subclassification 1401-01 (480 hours per quarter per driver) or 1401-03 (actual hours worked), but ~~((you))~~ must report all ~~((you))~~ exposure for the quarter under only one subclassification.~~

~~((b)) If you are or)) (ii) An entity reporting mandatorily covered workers, ~~((you))~~ may choose to report all driver exposure under subclassifications 1401-01 (480 hours per quarter per driver), 1401-02 (960 hours per quarter per vehicle), or 1401-03 (actual hours worked), but ~~((you))~~ must report all driver exposure for a quarter under only one subclassification.~~

~~((e)) Reporting method options:~~

~~((i))~~ (A) Flat rate by driver - The rate is based on ~~((four hundred eighty))~~ 480 hours per driver each quarter (classification 1401-01);

~~((ii))~~ (B) Flat rate by vehicle - The rate is based on ~~((nine hundred sixty))~~ 960 hours per vehicle each quarter (classification 1401-02);

~~((iii))~~ (C) Actual hours - The rate is based on actual hours worked (classification 1401-03).

Special note: If you report by driver or by actual hours worked, you must maintain verifiable records, such as lease agreements or payroll records.

~~((4))~~ **What are the quarterly reporting options for** (b) Limousine drivers and entities~~((7))~~; and cabulance drivers and entities~~((?))~~. For exempt drivers who elect coverage and for entities paying for coverage for mandatorily covered workers, when reporting an entire quarter, hours must be reported in one of the following methods:

~~((a))~~ (i) Actual hours worked; or

~~((b))~~ (ii) Four hundred eighty hours per quarter.

Special note: ~~((If you report))~~ Detailed records must be kept if reporting actual hours worked~~((, you must keep detailed records))~~.

(c) Transportation network companies (TNC).

TNCs must report quarterly the actual hours of each TNC driver for these times, as defined in chapter 49.46 RCW and this rule:

(i) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(ii) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform. For the purposes of reporting and coverage, a driver accepts a trip request and dispatch platform time begins when the driver indicates through the driver platform that they are starting travel to a passenger pick-up location.

(iii) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver that enables the prearrangement of passenger trips for compensation.

(iv) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip. For shared rides, passenger platform time means the period of time commencing when the first passenger enters the driver's vehicle until the time when the last passenger exits the driver's vehicle.

Special notes:

• TNCs must keep detailed records of each trip including; driver names, dispatch platform start and end times, and passenger platform start and end times.

• The department may request TNCs to provide supplemental quarterly reports of the total number of hours each driver was in dispatch and platform time for the quarter to ensure accurate reporting.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17-35205, filed 9/15/15, effective 10/16/15.]

OTS-4171.1

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

WAC 296-17A-1401 Classification 1401. ((Applies to providing passenger transportation to others, including:

- Establishments that employ taxi or for-hire drivers as defined under:
 - Either chapter 81.72 or 46.72 RCW; and
 - WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who:
 - Own their own vehicles or who lease vehicles from others; and
 - Elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.
- Commercial transportation services (also known as transportation network company) drivers as defined in Title 48 who are exempt from coverage, but who have elected optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.
- Pedicab and horse drawn carriage companies.

Special note: If all conditions are met for the general reporting rules about standard exception employees, establishments that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be reported separately in classification 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are reported separately in classification 3411.

Work contemplated by this classification includes, but is not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle;
- Pickup and delivery of small packages; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

This classification excludes:

- Maintenance/repair of the vehicle which is reported in classification 3411;
- Establishments that operate ambulance services which is reported separately in classification 1405;
- Establishments that operate cabulance and paratransit services exclusively which is reported separately in classification 1404; and
- Dispatchers with no other job duties who may be reported separately in classification 4904.

For administrative purposes, classification 1401 is divided into the following subclassification(s):

1401-01 Passenger transportation companies -- Flat rate by driver

~~This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.~~

~~**1401-02 Passenger transportation companies - Flat rate by vehicle**~~

~~This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~**1401-03 Passenger transportation companies - Actual hours**~~

~~This classification is for reporting employees on an actual hours worked basis.~~

~~**1401-04 Pedicab and horse-drawn carriage companies**~~

~~Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.~~

~~Work contemplated by this classification includes, but is not limited to, care and feeding of animals while the vehicle is available for transporting passengers.)~~

1401-01 Passenger transportation companies - Flat rate by driver

This classification is for reporting drivers on a flat rate of 480 hours per driver each quarter.

Applies to:

Businesses providing passenger transportation to others, including:

• Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.

• Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

• Businesses that operate ambulance services are classified in 1405;

• Businesses that operate cabulance and paratransit services exclusively are classified in 1404;

• Dispatchers with no other job duties may be classified separately in 4904; and

• Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-02 Passenger transportation companies - Flat rate by vehicle

This classification is for reporting vehicles on a flat rate of 960 hours per vehicle each quarter.

Applies to:

Businesses providing passenger transportation to others, including:

- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-03 Passenger transportation companies - Actual hours

This classification is for reporting employees on an actual hours worked basis.

Applies to:

Businesses providing passenger transportation to others, including:

- Transportation network companies as defined in Title 49 RCW. Special reporting and coverage requirements in WAC 296-17-35205;
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

- Businesses that operate ambulance services are classified in 1405;

- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-04 Pedicab and horse-drawn carriage companies

Applies to businesses engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Assisting passengers in and out of the vehicle; and
- The care and feeding of animals while vehicle is available for transporting passengers.

Businesses in this classification report the actual hours their employees work and must maintain verifiable records.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17A-1401, filed 9/15/15, effective 10/16/15. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.100. WSR 11-24-022, § 296-17A-1401, filed 11/30/11, effective 1/1/12. WSR 07-01-014, recodified as § 296-17A-1401, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-542, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-542, filed 8/28/98, effective 10/1/98; WSR 87-12-032 (Order 87-12), § 296-17-542, filed 5/29/87, effective 7/1/87; WSR 85-24-032 (Order 85-33), § 296-17-542, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-542, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-542, filed 11/29/82, effective 1/1/83; Order 73-22, § 296-17-542, filed 11/9/73, effective 1/1/74.]

WSR 23-05-082
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 14, 2023, 11:42 a.m., effective March 17, 2023]

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

Purpose: The purpose of the changes to the shared leave rules, applicable to school district staff and educational service district staff, is to align with current language in RCW 41.04.650 through 41.04.671. The statutes concerning shared leave were amended by the Washington state legislature via HB 2739 (2020).

Citation of Rules Affected by this Order: Amending WAC 392-136A-020, 392-136A-030, 392-136A-040, 392-136A-045, 392-136A-075.

Statutory Authority for Adoption: RCW 28A.400.380.

Adopted under notice filed as WSR 22-22-098 on November 2, 2022.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-136A-030(4) was changed for clarity. WAC 392-136A-030(8) was removed because it was relevant to Governor's Proclamation 20-05, which expired during the rules process. Subsections in WAC 392-136A-040 were changed for better clarity concerning instances in which employees can retain some accrued leave while accessing shared leave.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

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

Date Adopted: February 14, 2023.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4139.2

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-020 Definitions. As used in this chapter the term:

(1) "Annual leave" means vacation leave that an employee accrues and is maintained in records of a district for employees eligible to accrue annual leave.

(2) "District" means a school district or an educational service district.

(3) "Domestic violence" (~~means:~~

~~(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members;~~

~~(b) Sexual assault of one family or household member by another family or household member; or~~

~~(c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member)) has the same meaning as set forth in RCW 41.04.655.~~

(4) "Donated annual leave" means the amount of annual leave donated by a leave donor under the shared leave program.

(5) "Donated sick leave" means the amount of sick leave donated by a leave donor under the shared leave program.

(6) "Donated personal holiday" means the amount of personal holiday donated by a leave donor under the shared leave program of an educational service district pursuant to RCW 1.16.050.

(7) "Employee" means any school district or educational service district employee entitled to use and accrue annual and/or sick leave and for whom accurate leave records are maintained.

(8) "Employee's relative" means the employee's spouse, registered domestic partner, child, stepchild, grandchild, grandparent, parent, or sibling(~~, or other close relative by blood or marriage~~)).

(9) "Extraordinary or severe" means serious or extreme and/or life threatening.

(10) "Family or household members" has the same meaning as set forth in RCW (~~26.50.010~~) 10.99.020.

(11) "Household members" means persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. The term does not include persons sharing the same house when the living style is primarily that of a dormitory or commune.

(12) "Leave donor" means an employee who has an approved (~~written~~) request for the transfer of annual leave, sick leave, or personal holiday to the shared leave program.

(13) "Leave recipient" means a current employee who has an approved application to receive shared leave.

(14) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care(~~, for a period of up to sixteen weeks after the birth or placement~~)).

(15) "Personal holiday" means the additional paid holiday per calendar year granted to an educational service district employee pursuant to RCW 1.16.050.

(16) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(17) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(18) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(19) "Sick leave" means leave granted to an employee for the purpose of absence from work with pay in the event of illness, injury, and emergencies as authorized in RCW 28A.400.300.

(20) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(21) "State employer" means a state agency, the legislature, an institution of higher education, or a related higher education board.

(22) "Uniformed services" means the armed forces, the Army National Guard, and the Air National Guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time National Guard duty, or state active duty, the commissioned corps of the Public Health Service, the Coast Guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(23) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-020, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-030 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault, or stalking;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(g) Needs the time for parental leave; or

(h) Is sick or temporarily disabled because of pregnancy disability.

(2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has (~~(exhausted)~~) depleted or will shortly (~~(exhaust)~~) deplete leave in accordance with WAC 392-136A-040. (~~(If the employee qualifies under subsection (1)(g) or (h) of this section, the employee is not required to deplete all of his or her annual leave or sick leave in accordance with WAC 392-136A-040.)~~)

(5) The employee has abided by district policies regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave use if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(7) The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-030, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-040 ((Exhaustion)) Depletion of leave. (1) Employees who qualify for shared leave under WAC 392-136A-030 (1)(a) must first (~~(use all of)~~) deplete their personal holiday, accrued sick leave, and accrued annual leave before using shared leave. However, the employee can maintain up to 40 hours of annual leave and 40 hours of sick leave.

(2) Employees who qualify for shared leave under WAC 392-136A-030 (1)(b) must first (~~(use all of)~~) deplete their personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. However, the employee can maintain up to 40 hours of annual leave and 40 hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 392-136A-030 (1)(c) and (d) must first (~~(use all)~~) deplete their personal holiday and accrued annual leave (~~(that they have accrued before using shared leave)~~). However, the employee can maintain up to 40 hours of annual leave.

(4) Employees who qualify for shared leave under WAC 392-136A-030 (1)(e) or (f) must first (~~(use all)~~) deplete their personal holiday, accrued sick leave, and accrued annual leave before using shared leave. However, the employee can maintain up to 40 hours of vacation leave and 40 hours of sick leave.

(5) (~~((a) Educational service district employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must first use their personal holiday before using shared leave; and~~

~~(b) Employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) are not required to deplete all of their accrued annual leave and sick leave and can maintain up to forty hours of annual leave and forty hours of sick leave.)~~ Employees who qualify for shared leave under WAC 392-136A-030 (1)(g) or (h) must first deplete their personal holiday, accrued annual leave, and accrued sick leave before using shared leave. However, the employee can maintain up to 40 hours of annual leave and 40 hours of sick leave. Employees qualifying

for shared leave under WAC 392-136A-030 (1)(g) or (h) must use leave in accordance with RCW 41.04.671.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-040, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-045 Maximum amount. (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than (~~five hundred twenty-two~~) 522 days of shared leave during total district employment.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

(2) The district may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 392-136A-070.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-045, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

WAC 392-136A-075 Annual conversion of accumulated sick leave. The provisions of this chapter shall not reduce the ability of the employee to convert accumulated sick leave under WAC (~~(392-136A-015)~~) 392-136-015.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-075, filed 5/24/19, effective 6/24/19.]

WSR 23-05-096

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed February 15, 2023, 9:19 a.m., effective March 18, 2023]

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

Purpose: The purpose of this proposal is to repeal WAC 458-12-030 County appraisers' salary and classification plan, because it is out-dated, as the department of revenue does not perform the functions listed in the rule. WAC 458-12-035 Standard forms, is being amended to streamline the process for county assessors and county treasurers when updating forms normally provided by the department of revenue.

Citation of Rules Affected by this Order: Repealing WAC 458-12-030 County appraisers' salary and classification plan; and amending WAC 458-12-035 Standard forms.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Adopted under notice filed as WSR 22-22-009 on October 20, 2022.

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

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

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

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

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

Date Adopted: February 15, 2023.

Atif Aziz
Rules Coordinator

OTS-3968.1

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-035 ((Standard)) Department approved forms. ((All forms required to carry out the provisions of the statutes which are now used, or to be used in the future in connection with the assessment and collection of taxes, shall meet the standards as prescribed by the department of revenue. The forms now in use in the county assessors' and treasurers' offices shall be submitted to the department of revenue for review and approval upon request by the department.

It will be the policy of the department of revenue to permit use of all forms presently in use if, in the department's judgment, they adequately meet the standards and fulfill the statutory requirements. Once the department has approved the forms used in an office, the forms may be used until, in the opinion of the department, the forms need revision because of obsolescence caused by time or statutory change.

All forms shall be submitted in duplicate so that one copy of the approved form may be retained for the department of revenue.

After a complete review of all county and state forms, the state department of revenue will compile and adopt an official standard forms list for each county.)

(1) **Introduction.** RCW 84.08.020 requires the department of revenue (department) to prescribe all forms to be used in the assessment and collection of property taxes under Title 84 RCW. Certain modifications to these forms, including electronic forms, by county assessors and county treasurers, must be reviewed by the department. Requests for review of modified forms must be submitted to the department in the manner described in this rule.

(2) **Forms currently in use.** The department maintains a list of forms it is responsible for updating. These forms are used by county assessors and county treasurers to carry out the provisions of the assessment and collection of property taxes under Titles 84 RCW and 458 WAC. The department will permit the use of department forms revised by county assessors and treasurers if, in the department's judgment, they adequately meet the applicable statutory and program requirements.

(a) Once the department approves proposed revisions to a form, that form may be used until it needs revision because of obsolescence caused by time or statutory change. Each county assessor and treasurer is responsible for ensuring their office is utilizing the most current version of a form.

(b) Department approval is not required for changes to a form's contact information, such as a county employee's name, an office address, a phone number, an email address, hours of operation, etc. For example, RCW 84.34.030 requires that applications to classify land as farm and agricultural land be made to the county assessor on forms prepared by the department and supplied by the county assessor. If a county assessor elects to alter the department's application form, other than the changes described in this subsection, it must send its proposed changes to the department for approval.

(3) **Forms requiring approval.** A county choosing to use a modified form, with modifications other than those listed in subsection (2)(b) of this rule and the form has not been reviewed by the department, must submit the form to the department for review and approval to ensure it meets the applicable statutory and program requirements under Titles 84 RCW and 458 WAC, as follows:

(a) The county must electronically submit the form for review to the department's property tax division and provide the proposed form revisions;

(b) The department will review the proposed form revisions and notify the county if it approves the changes or if additional changes need to be made; and

(c) Once the department approves the form revisions and the county updates the form for public use, the county must send an electronic copy of the final revised form to the department's property tax division. The department will maintain a copy of the revised form as described in subsection (4) of this rule. If a county chooses not to make the required changes, it must use the department's version of the form at dor.wa.gov.

(4) **Form retention.** The department will keep an electronic copy of each form it has reviewed and approved for a county when the form is required to be provided by the department under Title 84 RCW or 458 WAC.

(Rule derived from RCW 84.08.020; 84.48.010; 84.56.050; TCR 10-30-1940.)

[Order PT 68-6, § 458-12-035, filed 4/29/68.]

OTS-3971.1

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|----------------|--|
| WAC 458-12-030 | County appraisers' salary and classification plan. |
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WSR 23-05-098

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed February 15, 2023, 9:44 a.m., effective March 18, 2023]

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

Purpose: This rule-making order amends the following subsections of WAC 399-80-010 Broadband service expansion grant and loan program:

- Subsections (4)(a) and (b) and (5): Enabling and creating a pre-application process for the broadband program.
- Subsection (5)(o): Updating the application requirements to broadband providers and removing previous contract requirements.
- Subsections (7)(a), (b), and (c): Requiring the public works board [board] to publish proposed geographic broadband project service areas on its website, as well as preapplications (within three business days of the close of the preapplication cycle) and sets an objection period for 30 days for the proposed project.
- Subsection (11): Removing the utilities and transportation commission (UTC) technical feasibility review.
- Subsection (14): Authorizing the public works board to make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects.
- Additional updates are made throughout this chapter to protect financial, commercial, and proprietary information.

Citation of Rules Affected by this Order: Amending WAC 399-80-010.

Statutory Authority for Adoption: RCW 43.155.040(5), 43.155.160(9)(e), and 43.155.160(14)(a).

Adopted under notice filed as WSR 23-02-014 on December 22, 2022.

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

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

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

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

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

Date Adopted: February 15, 2023.

Amanda Hathaway
Rules Coordinator

OTS-4271.1

AMENDATORY SECTION (Amending WSR 20-09-144, filed 4/21/20, effective 5/22/20)

WAC 399-80-010 Broadband service expansion grant and loan program. (1) The board, in collaboration with the office, shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

(2) (a) Grants and loans may be awarded under this section to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved areas.

(b) The board may choose to fund all or part of an application for funding, provided that the application meets the requirements of subsection ~~((9))~~ (11) of this section.

(3) Eligible applicants for grants and loans awarded under this section include:

- (a) Local governments;
- (b) Tribes;
- (c) Nonprofit organizations;
- (d) Cooperative associations;
- (e) Multiparty entities comprised of public entity members;
- (f) Limited liability corporations organized for the purpose of expanding broadband access; and
- (g) Incorporated businesses or partnerships.

(4) (a) The board shall develop administrative procedures governing the ~~((application))~~ preapplication and award process. The board shall act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding funds under this section.

(b) At least ~~((sixty))~~ 60 days prior to the first day ~~((applications))~~ preapplications may be submitted each fiscal year, the board must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

(c) The board may maintain separate accounting in the statewide broadband account created in RCW 43.155.165 as the board deems necessary to carry out the purposes of this section.

(d) The board must provide a method for the allocation of loans, grants, provision of technical assistance, and interest rates under this section.

(5) An applicant for a grant or loan under this section must provide the following information on the ~~((application))~~ preapplication:

- (a) The location and description of the project;
- (b) Evidence regarding the unserved nature of the community in which the project is to be located;
- (c) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;
- (d) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;
- (e) ~~((The estimated cost of retail services to end users facilitated by a project;~~
- (f) ~~The proposed actual download and upload speeds experienced by end users;~~

- ~~(g) Evidence of significant community institutions that will benefit from the proposed project;~~
- ~~(h) Anticipated economic, educational, health care, or public safety benefits created by the project;~~
- ~~(i) Evidence of community support for the project;~~
- ~~(j) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;~~
- ~~(k) The estimated total cost of the project;~~
- ~~(l) Other sources of funding for the project that will supplement any grant or loan award;~~
- ~~(m) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;~~
- ~~(n) A strategic plan to maintain long-term operation of the infrastructure;~~
- ~~(o)) Evidence that ((no later than six weeks)) before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the state's definition for broadband service as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;~~
- ~~((p)) (f) If applicable, the broadband service providers' written responses to the inquiry made under ((o)) (e) of this subsection; ((and~~
- ~~(q)) (g) The proposed geographic broadband service area and the proposed broadband speeds in the form and manner prescribed by the board;~~
- (h) Evidence of community support for the project; and
- (i) Any additional information requested by the board.
- (6) An applicant for a grant or loan under this section must provide the following information on the application:
- (a) ((Within thirty days of the close of the grant and loan application process,)) The final location and description of the project;
- (b) Evidence that the proposed infrastructure will be capable of scaling to greater download and upload speeds;
- (c) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;
- (d) The estimated cost of retail services to end users facilitated by a project;
- (e) The proposed actual download and upload speeds experienced by end users;
- (f) Evidence of significant community institutions that will benefit from the proposed project;
- (g) Anticipated economic, educational, health care, or public safety benefits created by the project;
- (h) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;
- (i) The estimated total cost of the project;
- (j) Other sources of funding for the project that will supplement any grant or loan award;

(k) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;

(l) A strategic plan to maintain long-term operation of the infrastructure;

(m) If applicable, documentation describing the outcome of the broadband service providers' written responses to the inquiry made prior to or during the preapplication phase; and

(n) Any additional information requested by the board.

(7) (a) The board shall publish on its website for at least 30 days the proposed geographic broadband service area and the proposed broadband speeds for each (~~(application)~~) proposed broadband project submitted in the preapplication period.

(b) The board shall, within three business days following the close of the preapplication cycle, publish on its website preapplications as described in subsection (5) of this section.

(c) The board shall set an objection period of at least 30 days.

(d) The board shall publish objection information received during the objection period that includes: (i) The objecting provider; (ii) the reason for objection; (iii) a description of how the current or proposed infrastructure meets or exceeds speeds contained in the definition of broadband service in RCW 43.330.530; (iv) existing or planned service plans or tiers and associated speeds; and (v) information about the objector's project status including percentage completed.

(8) (a) Any existing broadband service provider near the proposed project area may, (~~(within thirty days of publication of the information under (a) of this subsection,)~~) submit in writing to the board, an objection to (~~(an application)~~) a proposed broadband project. An objection must contain information demonstrating that:

(i) The project would result in overbuild, meaning that the objecting provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than the (~~(state speed goals contained in RCW 43.330.536)~~) speeds contained in the definition of broadband in RCW 43.330.530(2); or

(ii) The objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than the (~~(state speed goals contained in RCW 43.330.536)~~) speeds contained in the definition of broadband in RCW 43.330.530(2), no later than (~~(twenty-four)~~) 24 months after the date awards are made under this section for the grant and loan cycle under which the (~~(application)~~) preapplication was submitted.

(~~(e)~~) (b) Objections submitted to the board under this subsection must be certified by affidavit.

(c) The board shall provide a period, as specified, for applicants to submit responses to posted objections.

(d) The board may evaluate the information submitted under this section by the objecting provider and applicant and must consider it in making a determination on the (~~(application)~~) proposed broadband project objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of (~~(b)~~) (a) of this subsection in the proposed project area is credible. In assessing the commitment, the board may consider whether the objecting provider has

or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

(e) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

(f) An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the board's decision on the application. Requests for debriefing must be coordinated by the office and must be submitted in writing in accordance with procedures specified by the office.

(g) ~~((Confidential))~~ An objecting provider may mark any proprietary business and financial information ((submitted by an objecting provider under this subsection is exempt from disclosure)) as confidential that the objecting provider is willing to defend in court as exempt under chapter 42.56 RCW.

~~((7))~~ (9) (a) In evaluating applications and awarding funds, the board shall give priority to applications that are constructed in areas identified as unserved.

(b) In evaluating applications and awarding funds, the board may give priority to applications that:

(i) Provide assistance to public-private partnerships deploying broadband infrastructure from areas currently served with broadband service to areas currently lacking access to broadband services;

(ii) Demonstrate project readiness to proceed;

(iii) Construct infrastructure that is open access, meaning that during the useful life of the infrastructure, service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employing accountable interconnection arrangements published and available publicly;

(iv) Are submitted by tribal governments whose reservations are in rural and remote areas where reliable and efficient broadband services are unavailable to many or most residents;

(v) Bring broadband service to tribal lands, particularly to rural and remote tribal lands or areas servicing rural and remote tribal entities;

(vi) Are submitted by tribal governments in rural and remote areas that have spent significant amounts of tribal funds to address the problem but cannot provide necessary broadband services without either additional state support, additional federal support, or both;

(vii) Serve economically distressed areas of the state as the term "distressed area" is defined in RCW 43.168.020;

(viii) Offer new or substantially upgraded broadband service to important community anchor institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

(ix) Facilitate the use of telemedicine and electronic health records, especially in deliverance of behavioral health services and services to veterans;

(x) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;

(xi) Include a component to actively promote the adoption of newly available broadband services in the community;

(xii) Provide evidence of strong support for the project from citizens, government, businesses, and community institutions;

(xiii) Provide access to broadband service to a greater number of unserved households and businesses, including farms;

(xiv) Utilize equipment and technology demonstrating greater longevity of service;

(xv) Seek the lowest amount of state investment per new location served and leverage greater amounts of funding for the project from other private and public sources;

(xvi) Include evidence of a customer service plan;

(xvii) Consider leveraging existing broadband infrastructure and other unique solutions;

(xviii) Benefit public safety and fire preparedness; or

(xix) Demonstrate other priorities as the board, in collaboration with the office, may prescribe by rule.

(c) The board shall endeavor to award funds under this section to qualified applicants in all regions of the state.

(d) The board shall consider affordability and quality of service to end users in making a determination on any application.

(e) The board, in collaboration with the office, may develop additional rules for eligibility, project reapplications, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), ~~((and))~~ (6), (7), and (8) of this section.

(f) The board, in collaboration with the office, may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant and loan program created in this section.

~~((8))~~ (10) To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least ~~((fifteen))~~ 15 years.

~~((9))~~ (11) (a) No funds awarded under this section may fund more than ~~((fifty))~~ 50 percent of the total cost of the project, except as provided in (b) of this subsection.

(b) The board may choose to fund up to ~~((ninety))~~ 90 percent of the total cost of a project in financially distressed areas as the term "distressed area" is defined in RCW 43.168.020, and in areas identified as Indian country as the term "Indian country" is defined in WAC 458-20-192.

(c) Funds awarded to a single project under this section must not exceed ~~((two million dollars))~~ \$2,000,000, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, ~~((five million dollars))~~ \$5,000,000.

~~((10))~~ Prior to awarding funds under this section, the board must consult with the Washington utilities and transportation commission. The commission must provide to the board an assessment of the technical feasibility of a proposed application. The board must consider the commission's assessment as part of its evaluation of a proposed application.

~~(11))~~ (12) The board shall have such rights of recovery in the event of default in payment or other breach of financing agreement as may be provided in the agreement or otherwise by law.

~~((12))~~ (13) The community economic revitalization board shall facilitate the timely transmission of information and documents from its broadband program to the board in order to effectuate an orderly transition.

~~((13))~~ (14)(a) Emergency public works broadband projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been made necessary by a natural disaster or damaged by unforeseen events. To ensure limited resources are provided as efficiently as possible, the board shall grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the unforeseen event and shall not provide funds to a new provider to overbuild the existing provider. The loans or grants may be used to help fund all or part of an emergency public works broadband infrastructure project less any reimbursement from any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii) state disaster or emergency funds; (iii) insurance settlements; and (iv) litigation. Applicants must reimburse the department any moneys received from the above listed sources for four years after formal project closeout. Applicants eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(b) Eligible applicants for grants and loans awarded under this subsection are the same as those described in subsection (3) of this section.

(c) The board has discretion to waive certain program requirements in subsections (4) through (8) of this section if the applicant seeking emergency funding is the existing provider proposing to replace existing infrastructure impacted by the emergency.

(d) The board allocates funds to the emergency program biennially and the program is open until funds are expended.

(e) Eligible applicants must apply using the application and process provided by the board.

(f) Board deliberations—Emergency loan applications. The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(15) The definitions in RCW 43.330.530 apply throughout this section unless the context clearly requires otherwise.

(16) A "proposed broadband project" in subsections (7) and (8) of this section means a project that has been submitted as a preapplication to the board.

[Statutory Authority: RCW 43.155.040(5). WSR 20-09-144, § 399-80-010, filed 4/21/20, effective 5/22/20.]