

WSR 09-21-056
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed October 15, 2009, 9:12 a.m., effective November 15, 2009]

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

Purpose: SWCAA 400-030 Definitions. This [is] an existing section containing the definitions of words and phrases used throughout SWCAA 400. The proposed rule changes revise existing definitions, add new definitions, and make administrative edits. The changes are necessary to maintain consistency with state and federal programs.

SWCAA 400-040 General Standards for Maximum Emissions. This is an existing section that establishes a minimum set of air emission standards for all sources. The proposed rule changes are necessary [to] maintain consistency between agency rules and forthcoming agency policy.

SWCAA 400-045 Permit Application for Nonroad Engines. This is an existing section identifying requirements for permit applications for nonroad engine projects. The proposed rule changes are intended to match similar features in the agency's stationary source application requirements.

SWCAA 400-046 Application Review Process for Nonroad Engines. This is an existing section identifying requirements for the processing and approval of permit applications for nonroad engine projects. The proposed rule changes are being proposed as general improvements to the permitting regulation.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. This is an existing section that establishes a minimum set of air emission standards for all combustion and incineration units. The proposed rule change is being proposed to improve the standard requirements for reporting emissions from the affected source categories.

SWCAA 400-052 Stack Sampling of Large Combustion Sources. This is an existing section establishing minimum requirements for sampling emissions from major combustion sources. SWCAA proposed to delete this rule section in its entirety because the provisions of this rule section have been determined to be obsolete.

SWCAA 400-070 Emission Standards for Certain Source Categories. This is an existing section that establishes minimum air emission standards and work practices for selected general source categories. The proposed rule changes are intended to provide better control of air emissions and provide a sunset date for new perchloroethylene dry cleaner installations.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. This is a new section that establishes air emission standards, work practices, and monitoring/reporting requirements to be used in lieu of new source review for selected small source categories. The proposed rule changes are intended to provide a quicker and less expensive mechanism for approving affected emission units in lieu of the new source review process outlined in SWCAA 400-110.

SWCAA 400-074 Gasoline Transport Tankers. This is an existing section containing registration and compliance requirements for gasoline transport tankers. The proposed rule changes revise the applicability of subsection 400-074(1)

to be consistent with the remainder of rule section, and update an outdated rule citation.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. This is an existing section that adopts by reference the federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65. The proposed rule changes are necessary to support the agency's implementation of the affected federal standards.

SWCAA 400-100 Registration Requirements. This is an existing section identifying requirements for registration and inspection of air contaminant sources. The proposed rule changes are intended to incorporate current agency policy and improve clarity.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. This is an existing section identifying those sources that are exempt from the registration requirements of SWCAA 400-100. The proposed rule changes are intended to make exemption criteria easier to understand and apply.

SWCAA 400-105 Records, Monitoring and Reporting. This is an existing section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories. The proposed rule changes are intended to improve consistency in the various monitoring and reporting requirements that are applicable to registered sources.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. This is an existing section that establishes a minimum set of standards for emission testing and monitoring at air contaminant sources. The proposed rule changes are necessary to ensure that test/monitoring reports submitted to SWCAA contain all of the information required to determine compliance.

SWCAA 400-107 Excess Emissions. This is an existing section identifying requirements for the reporting of excess emissions, and providing penalty relief for unavoidable excess emissions. The proposed rule changes are necessary to make the affected reporting timeline consistent with similar reporting timelines in other air pollution programs.

SWCAA 400-109 Air Discharge Permit Applications. This is an existing section that identifies requirements for the submission and content of air discharge permit applications. The proposed rule changes are necessary to formally incorporate current agency practice into the applicable rules.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). This is an existing section identifying requirements for the processing and approval of air discharge permit applications. The proposed rule changes are necessary to ensure consistency with overlapping state/federal regulations and to formally incorporate agency permitting policy.

SWCAA 400-115 Standards of Performance for New Sources. This is an existing section that adopts by reference the federal new source performance standards contained in 40 C.F.R. Part 60. The proposed rule changes are necessary for proper implementation and enforcement of the affected federal standards.

SWCAA 400-130 Use of Emission Reduction Credits. This is an existing section identifying requirements, and pro-

cedures of use, for emission reduction credits. The proposed rule changes make minor administrative edits.

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank. This is an existing section identifying requirements and procedures for depositing emission reduction credits into SWCAA's emission credit bank. The proposed rule changes are being proposed in order to make the agency's credit program consistent with applicable federal requirements.

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. This is an existing section identifying requirements for maintenance of SWCAA's emission credit bank, issuance of emission reduction credits, and management of expired credits. The proposed rule changes are intended to make terminology in the rule section more consistent with terminology used in the remainder of SWCAA 400.

SWCAA 400-171 Public Involvement. This is an existing section identifying requirements for public notice of agency actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice. The proposed rule changes are intended to clarify the public notice/involvement process.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. This is an existing section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum allowable stack height is to be determined. The proposed rule change is intended to improve implementation of the affected requirement.

SWCAA 400 Appendix C Federal Standards Adopted by Reference. This is a new section containing informational lists of all federal regulations adopted by reference via SWCAA 400-075 and 400-115.

Citation of Existing Rules Affected by this Order: Repealing SWCAA 400-052; and amending SWCAA 400-030, 400-040, 400-045, 400-046, 400-050, 400-070, 400-074, 400-075, 400-100, 400-101, 400-105, 400-106, 400-107, 400-109, 400-110, 400-115, 400-130, 400-131, 400-136, 400-171, 400-200, and SWCAA 400 - Appendix C.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 09-14-058 on June 29, 2009.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 20, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 20, 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: October 1, 2009.

Robert D. Elliott
Executive Director

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-030 Definitions

[Statutory Authority: Chapter 70.94.030 RCW, and 70.94.141 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 3/20/84; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073 filed 11/13/06, effective 12/14/06]

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. This includes any substance regulated as an air pollutant under Chapter 173-460 WAC, Sections 111 and 112 of the Federal Clean Air Act, ozone depleting substances (Title VI of the Federal Clean Air Act), any substance for which a primary or secondary National Ambient Air Quality Standard has been established, and volatile organic compounds.

(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, 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 70.94 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 Part 60, Part 61, and Part 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 70.94.155 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 ~~((a reported meteorological phenomenon, according to which the average temperature~~

on earth is gradually increasing over its level in recent history. This rise in temperature is attributed to the increased concentration in the atmosphere of gases such as carbon dioxide that trap heat radiating upward and reradiate it toward earth.) 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) "**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.

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

(29) "**Deviation from ((approval conditions)) permit requirements**" means an instance when any ((approval condition)) 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.

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

(31) "**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.

(32) "**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 D396-01 "Standard Specification for Fuel Oils."

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

(34) "**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.

~~((34))~~ (35) "**Emission**" means a release of air contaminants into the ambient air.

~~((35))~~ (36) "**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(ε) (i.e., low NO_x burner for a boiler or turbine).

~~((36))~~ (37) "**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. ERCs may be sold, leased, banked for future use or traded in accordance with applicable regulations. Emission reduction credits shall provide an incentive for reducing emissions below the required levels and establish a framework to promote a market based approach to air pollution control.

~~((37))~~ (38) "**Emission standard**" and "**emission limitation**" mean a requirement established under the Federal Clean Air Act, Chapter 70.94 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 70.94 RCW.

~~((38))~~ (39) "**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 70.94 RCW, or Chapter 70.98 RCW.

~~((39))~~ (40) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard or emission limit.

~~((40))~~ (41) "**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 SWCAA 400-200(2).

~~((41))~~ (42) "**Executive Director**" means the Control Officer of the Southwest Clean Air Agency.

~~((42))~~ (43) "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.

~~((43))~~ (44) "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.

~~((44))~~ (45) "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.

~~((45))~~ (46) "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.

~~((46))~~ (47) "Federally enforceable" means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or 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.

~~((47))~~ (48) "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.

~~((48))~~ (49) "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.

~~((49))~~ (50) "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive emissions are to be considered in determining whether a stationary source is a major source under section 112 of the Federal Clean Air Act.

~~((50))~~ (51) "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.

~~((51))~~ (52) "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.

~~((52))~~ (53) "Good engineering practice" (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2)(a)(ii).

~~((53))~~ (54) "Greenhouse gas" means a gas that has the ability to contribute to a greenhouse effect in the ambient atmosphere. Greenhouse gases include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

~~((54))~~ (55) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

~~((55))~~ (56) "In operation" means engaged in activity related to the primary design function of a "stationary source."

~~((56))~~ (57) "Installation" means the act of installing, ~~(which means)~~ 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.

~~((57))~~ (58) "**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.

~~((58))~~ (59) "**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.

~~((59))~~ (60) "**Maintenance pollutant**" means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((60))~~ (61)(a) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

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

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

(A) Routine maintenance, repair, and replacement;

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

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

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

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

(I) The "stationary source" was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after Decem-

ber 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(II) The "stationary source" is approved to use under any permit or approval order issued under SWCAA 400-112 or WAC 173-400-112;

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

(G) Any change in ownership at a "stationary source;"

(H) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2002) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

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

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

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

(b) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

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

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

(A) Routine maintenance, repair and replacement;

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

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

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

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

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

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

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

(G) Any change in ownership at a "stationary source;"

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

(I) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2002) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any, and

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

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

~~((61))~~ (62)(a) **"Major stationary source,"** as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means:

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

(A) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀.

(B) 50 tons per year of carbon monoxide (CO) in any "serious" nonattainment area for CO where "stationary sources" contribute significantly to CO levels in the area.

(ii) Any physical change that would occur at a "stationary source" not qualifying under (a)(i) of this subsection as a "major stationary source," if the change would constitute a "major stationary source" by itself.

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

(iv) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major station-

ary source," unless the "stationary source" belongs to one of the following categories of "stationary sources" or the "stationary source" is major due to (a)(i)(A) or (a)(i)(B) of this subsection:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other "stationary source" category, which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act.

(v) For purposes of determining whether a "stationary source" is a "major stationary source," 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 industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

(b) **"Major stationary source,"** as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

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

(A) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(B) Coal cleaning plants (with thermal dryers);

- (C) Kraft pulp mills;
 - (D) Portland cement plants;
 - (E) Primary zinc smelters;
 - (F) Iron and steel mill plants;
 - (G) Primary aluminum ore reduction plants;
 - (H) Primary copper smelters;
 - (I) Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - (J) Hydrofluoric, sulfuric, and nitric acid plants;
 - (K) Petroleum refineries;
 - (L) Lime plants;
 - (M) Phosphate rock processing plants;
 - (N) Coke oven batteries;
 - (O) Sulfur recovery plants;
 - (P) Carbon black plants (furnace process);
 - (Q) Primary lead smelters;
 - (R) Fuel conversion plants;
 - (S) Sintering plants;
 - (T) Secondary metal production plants;
 - (U) Chemical process plants;
 - (V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
 - (W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (X) Taconite ore processing plants;
 - (Y) Glass fiber processing plants; and
 - (Z) Charcoal production plants.
- (ii) Regardless of the "stationary source" size specified in (b)(i) of this subsection, any "stationary source" which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or
- (iii) Any physical change that would occur at a "stationary source" not otherwise qualifying under (b)(i) or (ii) of this subsection, as a "major stationary source" if the change would constitute a "major stationary source" by itself.
- (iv) A "major stationary source" that is major for volatile organic compounds or (~~(NO_x)~~) nitrogen oxides shall be considered major for ozone.
- (v) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major stationary source," unless the "stationary source" belongs to one of the following categories:
- (A) Coal cleaning plants (with thermal dryers);
 - (B) Kraft pulp mills;
 - (C) Portland cement plants;
 - (D) Primary zinc smelters;
 - (E) Iron and steel mills;
 - (F) Primary aluminum ore reduction plants;
 - (G) Primary copper smelters;
 - (H) Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - (I) Hydrofluoric, sulfuric, or nitric acid plants;
 - (J) Petroleum refineries;
 - (K) Lime plants;
 - (L) Phosphate rock processing plants;
 - (M) Coke oven batteries;
 - (N) Sulfur recovery plants;
 - (O) Carbon black plants (furnace process);

- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants;
- (U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (AA) Any other "stationary source" category that is being regulated under Section 111 or 112 of the Federal Clean Air Act as of August 7, 1980.

(vi) For purposes of determining whether a "stationary source" is a "major stationary source," 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 industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

(63) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, 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.

~~((62))~~ (64) "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.

~~((63))~~ (65) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((64))~~ (66) "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.

~~((65))~~ (67) "**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.

~~((66))~~ (68) "**Motor vehicle**" means any self propelled vehicle required to be licensed pursuant to Chapter 46.16 RCW.

~~((67))~~ (69) "**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).

~~((68))~~ (70) "**National Emission Standards for Hazardous Air Pollutants**" (NESHAPS) means the federal rules in 40 CFR Part 61.

~~((69))~~ (71) "**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.

~~((70))~~ (72) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((71))~~ (73)(a) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means:

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

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

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

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

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

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

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

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

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

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

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

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

(D) The permitting agency has not relied on it in issuing any permit or order of approval under this section or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

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

(b) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

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

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

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

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

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

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

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

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

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

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

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

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

~~((72))~~ (74) "**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"; or

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

~~((73))~~ (75) "**New Source Performance Standards**" (NSPS) means the federal rules in 40 CFR Part 60.

~~((74))~~ (76) "**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.

~~((75))~~ (77) "**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)

~~((76))~~ (78) "**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.

~~((77))~~ (79) "**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.

~~((78))~~ (80) "**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.)

~~((79))~~ (81) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((80))~~ (82) "**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.

~~((81))~~ (83) "**Operating permit**" means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((82))~~ (84) "**Operating permit application**" means the same as "application" as described in WAC 173-401-500 and -510.

~~((83))~~ (85) "**Order**" means any regulatory order issued by ~~(Ecology or)~~ the Agency or Ecology pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153 and 70.94.141(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, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

~~((84))~~ (86) "**Order of Approval**" means a regulatory order issued by ~~(Ecology or)~~ 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.

~~((85))~~ (87) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((86))~~ (88) "**Particulate matter**" (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((87))~~ (89) "**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.

~~((88))~~ (90) "**Parts per million by volume**" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume. When calculating or measuring the ppmv of a given gas or carrier stream, such measurement or calculation shall be exclusive of water and particulate matter.

~~((89))~~ (91) "**Permanent shutdown**" means permanently stopping or terminating ~~(all processes at)~~ 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. ~~(Failure to pay registration fees for greater than one year is presumed to constitute a permanent shutdown. A shutdown lasting two or more years is presumed to be permanent, except that this presumption does not apply in the case of portable equipment operating under a valid permit pursuant to SWCAA 400-110(6).)~~

(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 ~~(shall)~~ is presumed to-constitute a permanent shutdown.

(c) Any shutdown lasting five or more years is ~~(considered)~~ presumed to be permanent.

~~((90))~~ (92) "**Permitting agency**" means Ecology or the local air pollution control agency with jurisdiction over a "source."

~~((91))~~ (93) "**Person**" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

~~((92))~~ (94) "**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.

~~((93))~~ (95) "**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.

~~((94))~~ (96) "**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.

~~((95))~~ (97) "**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.

~~((96))~~ (98) "**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 50 or by a test method specified in the Washington SIP.

~~((97))~~ (99) "**Pollutant**" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions (4) and (7))

~~((98))~~ (100) "**Portable equipment**" 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 equipment is subject to the requirements of SWCAA 400-109 and 400-110. Portable equipment includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

~~((99))~~ (101) "**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."

~~((100))~~ (102) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400-141 and adopted by reference in SWCAA 400-141.

~~((101))~~ (103) "**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.

~~((102))~~ (104) "**Reasonably attributable**" means attributable by visual observation or any other technique the Agency deems appropriate.

~~((103))~~ (105) "**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 reason-

ably 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."

~~((104))~~ (106) "**Regulatory order**" means an order issued by ~~(Ecology or)~~ the Agency or Ecology to an air contaminant source, any applicable provision of Chapter 70.94 RCW, or the rules adopted there under, 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.

~~((105))~~ (107) "**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.

~~((106))~~ (108) "**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 may include, but are not limited to:

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

(b) 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."

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

~~((107))~~ (110)(a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means, in reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

| <i>Pollutant</i> | <i>Emission Rate</i> |
|-----------------------------|-------------------------|
| Carbon monoxide: | 100 tons per year (tpy) |
| Nitrogen oxides: | 40 tpy |
| Sulfur dioxide: | 40 tpy |
| Volatile organic compounds: | 40 tpy |
| Lead: | 0.6 tpy |
| PM ₁₀ : | 15 tpy |

(b) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or

unclassified areas (SWCAA 400-113), means: (i) In reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

| <i>Pollutant</i> | <i>Emission Rate</i> |
|--|---|
| Carbon monoxide: | 100 tons per year (tpy) |
| Nitrogen oxides: | 40 tpy |
| Sulfur dioxide: | 40 tpy |
| Particulate matter: | 25 tpy - PM 15 tpy - PM ₁₀ |
| Volatile organic compounds: | 40 tpy |
| Fluorides: | 3 tpy |
| Lead: | 0.6 tpy |
| Sulfuric acid mist: | 7 tpy |
| Hydrogen sulfide (H ₂ S): | 10 tpy |
| Total reduced sulfur (including H ₂ S): | 10 tpy |
| Reduced sulfur compounds (including H ₂ S): | 10 tpy |
| Municipal waste combustor organics: (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.2 grams per year (0.112 oz. per year or 49 grains per year) |
| Municipal waste combustor metals: (measured as particulate matter) | 14 megagrams per year (15 tpy) |
| Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride) | 36 megagrams per year (40 tpy) |
| Municipal solid waste landfill emissions: (measured as non-methane organic compounds) | 45 mega grams per year (50 tpy) |
| Ozone-depleting substances (in effect on July 1, 2000): | 100 tpy |

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

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

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

((108)) **(112) "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.

((109)) **(113) "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.

((110)) **(114) "Southwest Clean Air Agency"** (SWCAA) means the local ~~(air pollution)~~ 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 70.94 RCW in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

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

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

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

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

((114)) **(119) "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.

((115)) **(120) "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.

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

((117)) **(122) "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.

((118)) **(123) "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.

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

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

((121)) **(126) "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.

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

((123)) **(128) "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.

((124)) **(129) "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.

((125)) **(130) "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.

((126)) **(131) "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.

((127)) **(132) "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; 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-methoxybutane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅); 1,1,1,2,2,3,3,3-heptafluoro-3-methoxypropane (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); 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 the amount of negligibly-reactive compounds in the "source's" emissions.

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 error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-040 General Standards for Maximum Emissions

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, and 70.94.154 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 12/18/79; Amended by Board 3/20/84; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

All "~~(stationary)~~" 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. Further, 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 70.94.154, 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 permit the emission for more than three minutes, in any one hour, of an air contaminant from any emission unit 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:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty 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. ~~((This practice))~~ Except for testing and troubleshooting, soot blowing/grate cleaning is to be scheduled for the same approximate times each day. ~~((and the Agency shall be advised of))~~ The boiler operator shall 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.

(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 70.94.331 (2)(c).

(e) Exemptions from the twenty percent opacity standard.

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

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall 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 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.

(ii) 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 exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(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 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 use reasonable and available control methods, which shall include 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) Any person who shall cause or allow the generation of any odor from any "source," which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(b) A "~~(stationary)~~" source" that is a manufacturing process shall not be considered in violation of this section provided that:

(i) The "~~(stationary)~~" source" is implementing all reasonable means of odor control and abatement including, but not limited to, Best Available Control Technology (BACT), Maximum Available Control Technology (MACT), or Lowest Achievable Emission Rate (LAER), as applicable for odor control and abatement;

(ii) All odor control measures are properly maintained and operated; and

(iii) The "~~(stationary)~~" source" is operating in compliance with other applicable regulations and emission limits.

(c) When the "source" is using "good agricultural practices," as provided in RCW 70.94.640, no violation of this section shall 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 ~~((a))~~ any "~~(stationary)~~" source" of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the "~~(stationary)~~" source" 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 use reasonably available control technology (RACT) to control 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 brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-045 Permit Application for Nonroad Engines

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW; Original adoption 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066, filed 11/15/05, effective 12/16/05; 06-23-073 filed 11/13/06, effective 12/14/06]

(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~~((75))~~ except for the following:

(a) Nonroad engine ~~((projects))~~ installations with an aggregate power rating less than ~~((200))~~ 500 horsepower;

(b) Small/residential water well drilling rigs;

(c) Portable firefighting equipment;

- (d) Mobile cranes and pile drivers;
- (e) Engines used for emergency flood control;
- (f) Engines used to power carnival or amusement rides;

or

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

(h) Engines used to replace utility power on an emergency 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.

(3) **Application Submittal.** A complete nonroad engine permit application shall be submitted for each new installation, replacement, or other alteration of a nonroad engine.

(4) **Application Fees.** A filing fee of \$((600.00 and)) 500 plus a review fee, as shown in Table A, shall be submitted with the applicant prior to Agency review. If additional types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B]).

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.

TABLE A

Nonroad Engine Permit Application Review Fees

| <i>Equipment/Activity</i> | <i>Associated Work Hours</i> | <i>Review Fee</i> |
|--|------------------------------|--|
| i. Nonroad Engine (Aggregate horsepower rating): | | |
| ((Less than 500 | 40 | \$ 700.00) |
| 500 or more but less than 2,000 | 14 | 1,000.00 |
| 2,000 or more but less than 5,000 | 21 | 1,500.00 |
| 5,000 or more but less than 10,000 | 42 | 3,000.00 |
| 10,000 or more | 85 | 6,000.00 |
| ii. Minor Change to Existing Permit Conditions: | 8 | \$ 600.00 |
| iii. Other (Not classified above): | | \$200.00 per ton of emission |
| iv. Emergency Applications | | Double the normal application and review fee |

TABLE B

Additional Review Fees

| <i>Equipment/Activity</i> | <i>Associated Work Hours</i> | <i>Review Fee</i> |
|--|------------------------------|-------------------|
| v. State Environmental Policy Act (SEPA) - Lead Agency | | |
| Minor | 14 | \$ 1,000.00 |
| Major | 35 | 2,500.00 |
| vi. Environmental Impact Statement (EIS) Review | | |
| Minor | 11 | \$ 800.00 |
| Major | 28 | 2,000.00 |

| | <i>Equipment/Activity</i> | <i>Associated Work Hours</i> | <i>Review Fee</i> |
|-------|-----------------------------------|------------------------------|-------------------|
| vii. | Variance request | 11 | \$ 800.00 |
| viii. | Review of ambient impact analysis | | \$ 70.00/hr. |

(5) **Agency actions.** Each acceptable and complete non-road 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.

(6) **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 brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-046 Application Review Process for Non-road Engines

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, Original adoption 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073 filed 11/13/06, effective 12/14/06]

(1) **Applicability.**

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(115). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) **Requirements.**

(a) Provided that all review requirements are met, a non-road engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with

applicable ~~((requirements for ambient air increments and))~~ ambient air quality standards (See Table A below). Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A.

TABLE A
Emission Concentration Regulatory Standards

| Pollutant | Averaging Period | PSD Ambient Increment <i>40 CFR 51.166(c)</i> | | National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i> | | State Ambient Air Quality Standards <i>173-470, 474, and 475 WAC</i> |
|--|--|--|-------------------------------|--|---|---|
| | | Class I µg/m ³ | Class II µg/m ³ | Primary Standard µg/m ³ (ppm) | Secondary Standard µg/m ³ (ppm) | Ambient Standard µg/m ³ (ppm) |
| Carbon Monoxide (CO) | 8-Hour | — | — | 10,000 ^b (9.0) | — | 10,000 ^b (9.0) |
| | 1-Hour | — | — | 40,000 ^b (35.0) | — | 40,000 ^b (35.0) |
| Nitrogen Dioxide (NO ₂) | Annual ^a (arithmetic mean) | 2.5 | 25 | 100 (0.05) | 100 (0.05) | 100 (0.05) |
| Ozone (O ₃) | 1-Hour ^e | — | — | (0.12) | (0.12) | (0.12) |
| | 8-Hour ^f | — | — | ((0.08)) (0.075) | ((0.08)) (0.075) | — |
| Sulfur Dioxide (SO ₂) | Annual ^a | 2 | 20 | 80 (0.03) | — | 53 (0.02) |
| | 24-Hour | 5 | 91 | 365 ^b (0.14) | — | 260 ^b (0.10) |
| | 3-Hour | 25 | 512 | — | 1,300 ^b (0.50) | — |
| | 1-Hour | — | — | — | — | 1,065 ^b (0.40) ^d |
| Lead | Quarterly Average | — | — | 1.5 | 1.5 | 1.5 |
| ((Total Suspended Particulates (TSP))) | ((Annual^a (geometric-mean))) | — | — | — | — | ((60)) |
| | ((24-Hour)) | — | — | — | — | ((150^b)) |
| Particulate Matter less than 10 µm (PM ₁₀) | Annual (arithmetic mean) | 4 | 17 | ((50)) | ((50)) | 50 |
| | 24-Hour ⁱ | 8 | 30 | 150 ^b | 150 ^b | 150 ^b |
| Particulate Matter less than 2.5 µm (PM _{2.5}) | Annual ^g (arithmetic mean) | — | — | 15 | 15 | — |
| | 24-Hour ^h | — | — | ((65)) 35 | ((65)) 35 | — |

µg/m³ = micrograms per cubic meter; ppm = parts per million

^a Never to be exceeded.

^b Not to be exceeded more than once per year.

^c ~~This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.~~

^d Also, 0.25 ppm not to be exceeded more than twice in seven days.

^e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.

^f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.

^g Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.

^h Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.

ⁱ Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.

Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted.

Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.

~~(If the ambient impact in a Class I or Class II area of a proposed project is predicted to be less than the respective ambient air increments, the air quality analysis is complete at that point.)~~ If the ambient impact of a proposed project could potentially exceed ~~(the)~~ an applicable ambient air increment~~(s)~~, the Agency may require that the applicant ~~(shall)~~ demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, ~~(2002)~~ 2008). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) Application processing/completeness determination. Within ~~(thirty (30))~~ 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) Final determination.

(a) Within ~~(sixty (60))~~ 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(5) Appeals. A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) Compliance. Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) Expiration. Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration is not commenced within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. This provision does not apply to the time period between commencement of the approved phases of a phased project. Each phase of the

project must commence within eighteen months of the projected and approved commencement date. The Agency may specify an earlier date for commencement in a nonroad engine permit.

If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.

(8) Change of conditions.

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

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

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-045(3) shall apply to these requests.

~~(c) ((A))~~ Actions taken under this subsection ((shall)) may be subject to the public involvement provisions of SWCAA 400-171.

(9) Engine registration. The owner or operator of nonroad engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee according to the schedule below. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and pay a second registration fee.

| <u>Engine Rating (per unit)</u> | <u>Registration Fee</u> |
|---------------------------------|-------------------------|
| <u>500 horsepower or less</u> | <u>\$250</u> |
| <u>More than 500 horsepower</u> | <u>\$350</u> |

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 material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by board 12/18/79; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 01-

05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Particulate matter emissions.** Combustion and incineration emission units shall meet all requirements of SWCAA 400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emission unit combusting wood derived fuels for the production of steam. No person shall allow or permit the emission of particulate matter from an emission unit combusting wood derived fuels for the production of steam in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA Method 5 in 40 CFR Part 60, Appendix A or other acceptable sampling methods approved in advance by both the Agency and EPA.

(2) **Incinerators.** For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by applicable sampling methods or other procedures approved in advance by the Agency including but not limited to those methods contained in "Source Test Manual - Procedures for Compliance Testing," State of Washington, Department of Ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the Agency.

(3) **Measurement correction.** Measured concentrations for combustion and incineration units shall be (~~adjusted~~) corrected in accordance with the following listing. "Source categories" not identified shall have measured concentrations for volumes corrected to 7% oxygen, except when the Agency determines that an alternate oxygen correction factor is more representative of normal operations. Concentrations for the following "source categories" shall normally be (~~adjusted~~) corrected to the following oxygen concentrations: gas, diesel, and oil-fired boilers: 3%; medical/hospital waste incinerators: 12%; natural gas turbines, asphalt mixers and aggregate dryers: 15%. Concentrations from thermal oxidizers and open/enclosed flares shall be reported as measured.

(4) **Commercial and industrial solid waste incineration units constructed on or before November 30, 1999.** (See SWCAA 400-115(1) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers

the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (4)(c) of this subsection.

(c) Exempted units. The following types of incineration units are exempt from this subsection:

(i) Pathological waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) Agricultural waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) Municipal waste combustion units. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units regulated under 40 CFR Part 60, Subpart Ea or Subpart Eb (in effect on July 1, 2000); 40 CFR Part 60, Subpart AAAA (in effect on June 1, 2001); or WAC 173-400-050(5).

(B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (in effect on June 1, 2001), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid

waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

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

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

(iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2000);

(v) Small power production facilities. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vi) Cogeneration facilities. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vii) Hazardous waste combustion units. Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under Section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under Subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2002).

(viii) Materials recovery units. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on July 1, 2002).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) Cyclonic barrel burners. See 40 CFR 60.2265 (in effect on July 1, 2002).

(xi) Rack, part, and drum reclamation units. See 40 CFR 60.2265 (in effect on July 1, 2002).

(xii) Cement kilns. Kilns regulated under Subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazard-

ous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2002).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2002).

(xiv) Chemical recovery units. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on July 1, 2002).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on July 1, 2002) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on July 1, 2002, which is adopted by reference.

(i) The federal rule contains these major components:

(A) Increments of progress towards compliance in 60.2575 through 60.2630;

(B) Waste management plan requirements in 60.2620 through 60.2630;

(C) Operator training and qualification requirements in 60.2635 through 60.2665;

(D) Emission limitations and operating limits in 60.2670 through 60.2685;

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

(I) Recordkeeping and reporting requirements in 60.2740 through 60.2800;

(J) Title V operating permits requirements in 60.2805;

(K) Air curtain incinerator requirements in 60.2810 through 60.2870;

(L) Definitions in 60.2875; and

(M) Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(ii) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the Agency.

(iii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iv) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, Chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(vi) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than January 1, 2004. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units.** Small Municipal waste combustion units constructed on or before August 30, 1999. (See SWCAA 400-115(1) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (c)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (c)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) Small power production units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iii) Cogeneration units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iv) Municipal waste combustion units that combust only tires. Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(v) Hazardous waste combustion units. Units are exempt from this section if the units have received a permit under Section 3005 of the Solid Waste Disposal Act.

(vi) Materials recovery units. Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) Co-fired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) Plastics/rubber recycling units. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) Units that combust fuels made from products of plastics/rubber recycling plants. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical

plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) Cement kilns. Cement kilns that combust municipal solid waste are exempt.

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on July 1, 2002) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on July 1, 2002).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (in effect on July 1, 2002).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on July 1, 2002).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, 2002) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, 2002) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on July 1, 2002), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935; and

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means SWCAA 400-050(5);

(B) "You" in the federal rule means the owner or operator;

(C) "Administrator" includes the permitting agency;

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule; and

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

| Affected units | Increment 1 (Submit final control plan) | Increment 2 (Award contracts) | Increment 3 (Begin on-site construction) | Increment 4 (Complete on-site construction) | Increment 5 (Final compliance) |
|--------------------|--|----------------------------------|---|--|-----------------------------------|
| All Class I units | August 6, 2003 | April 6, 2004 | October 6, 2004 | October 6, 2005 | November 6, 2005 |
| All Class II units | September 6, 2003 | Not applicable | Not applicable | Not applicable | May 6, 2005 |

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on July 1, 2002).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, Subpart BBBB (in effect on July 1, 2002) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction permit or operation permit) if a permit modification is required.

(i) Air operating permit. Chapter 173-401 WAC, the air operating permit regulation, applicability begins on July 1, 2002. See WAC 173-401-500 for permit application requirements and deadlines.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

((SWCAA 400-052 Stack Sampling of Large Combustion Sources

~~{Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03}}~~

~~((1) **Applicability.** The requirements of this section apply to each "stationary source" which emits 100 tons per year or more of nitrogen oxides, carbon monoxide, particulate matter, sulfur dioxide or volatile organic compounds due to the operation of one or more combustion or incineration units. Individual emission units with a potential to emit of less than 10 tons per year of the qualifying pollutant are exempt from the requirements of this section.~~

~~(2) **Emission testing requirements.** The owner or operator of a "stationary source" subject to this section shall conduct emission testing to quantify emissions of each qualifying pollutant. Unless an alternative schedule has been provided in accordance with subsections (5) or (6) below, emission testing shall be conducted according to the following schedule:~~

~~(a) "Stationary sources" subject to the requirements of this section with more than one combustion or incineration unit shall divide affected combustion or incineration units into test groups. The collective emissions of each test group shall comprise at least 25 percent of the potential emissions of the qualifying pollutant. One test group shall be emission tested at least once every two calendar years. Test groups shall be tested in rotation so that one group is tested during~~

each test period, and each group is tested before any other group is tested twice in the same rotation.

~~(b) Regardless of subsection (2)(a), any individual combustion or incineration unit that has the potential to emit greater than 100 tons per year of any pollutant listed in subsection (1) shall be emission tested at least once every two calendar years.~~

~~(3) **Sampling methods.** All emission testing shall be conducted in accordance with the requirements of SWCAA 400-106.~~

~~(4) **Additional requirements.** Nothing in this section shall be construed as to limit the ability of the Agency to impose additional or supplemental emission testing requirements for any emission unit within the Agency's jurisdiction in accordance with SWCAA 400-105(2) or 400-106(1)(a).~~

~~(5) **Alternative sampling schedules.** The Agency may accept or require an alternative to the emission testing schedule in subsection (2). Such an alternative emission testing schedule must be specified in writing by the Agency.~~

~~(6) **Continuous emission monitors.** Continuous emission monitors may be utilized as an alternative to the emission testing requirements in subsection (2) provided the monitors are operated and maintained in accordance with the applicable performance specification(s) in 40 CFR Part 60, Appendix B and the quality assurance procedures of 40 CFR Part 60, Appendix F, both as in effect on July 1, 2002.)~~

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-070 ((~~Emission Standards~~)) General Requirements for Certain Source Categories

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

The Agency finds that the reasonable regulation of "stationary sources" within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emission units within the categories listed.

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

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of SWCAA 400-040 and SWCAA 400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any consecutive eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary for efficient operation of these units. ~~((This practice))~~ Soot blowing and grate cleaning is to be scheduled for the same specific times each day. ((and the Agency shall be notified of)) The boiler operator shall maintain a written schedule ((or any changes)) on file with the Agency, and provide updates as necessary.

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

(3) **Orchard heating.**

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

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

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

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

(6) **Gasoline dispensing facilities.**

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

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

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

(7) **Perchloroethylene Dry Cleaners.**

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

~~((a))~~ (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).

~~((b))~~ (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.

~~((e))~~ (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 absorber for all machines installed after September 21, 1993. |

~~((f))~~ (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.

~~((g))~~ (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 ~~((two working))~~ 2 business days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than ~~((five working))~~ 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.

~~((h))~~ (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.

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible.

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

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

(8) Abrasive blasting.

(a) Abrasive blasting shall be performed inside a booth or structure designed to capture the blast grit, overspray, and removed material except that outdoor blasting of structures or items too large to be reasonably handled indoors or in an enclosure shall employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps.

(b) Outdoor blasting shall be performed with either steel shot 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 with sand shall be performed inside a blasting booth, enclosure, or structure designed to capture fugitive particulate matter.

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

(9) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts

A (General Provisions) and E (Incineration) in effect on July 1, 2002, are adopted by reference.

(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, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

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

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

(c) **Standards for MSW landfill emissions((-):**

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

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

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

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

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

(e) **Test methods and procedures((-):**

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

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

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

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

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

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

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

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

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

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

(h) **Gas collection and control systems((-):**

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

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

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

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

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

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

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

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis 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 do not apply to:

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

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

(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 capacity 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) No person shall burn as fuel used oil that exceeds any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Cadmium - 2 ppm maximum;

(iii) Chromium - 10 ppm maximum;

(iv) Lead - 100 ppm maximum;

(v) Flash point - 100 °F minimum; and

(vi) Total halogens - 4,000 ppm maximum. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under 40 CFR 279.10 (b)(1). Such used oil is subject to 40 CFR 266, Subpart H when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: 40 CFR 761.20(e) imposes standards for the burning of used oil containing polychlorinated biphenyls (PCBs).

(12) Coffee roasters.

(a) Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch are required to maintain and operate an afterburner that treats all roasting and cooling exhaust streams prior to discharge to the ambient air.

(b) 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.

(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) 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).

(c) On or after January 1, 2013, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 20 ppmv at 3% O₂, dry (0.067 lb per million Btu of heat input).

(14) Rendering plants.

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

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

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

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

(15) Outdoor wood-fired boilers.

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

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

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

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

(ii) A minimum of fifty feet from the residence it is serving;

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

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

(d) Outdoor wood-fired boilers shall only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler shall follow manufacturer-recommended fuel loading times and amounts. In no case, shall a boiler be fired on any prohibited fuel cited in WAC 173-433.

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

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

NEW SECTION

SWCAA 400-072 Emission Standards for Selected Small Source Categories

[Statutory Authority: Chapter 70.94.141 RCW.]

The Agency has established emission standards and operational requirements for selected small source categories. The standards and requirements contained in this section are intended to be representative of BACT for the affected sources. An air discharge permit application for criteria and/or toxic air pollutants pursuant to SWCAA 400-109 is not required for an emission unit that falls within one of the affected source categories, provided the owner or operator submits proper notification to the Agency and maintains compliance with the monitoring, recordkeeping, testing, and reporting requirements specified for the applicable source category. Any emission unit that fails to maintain continuing compliance with applicable requirements becomes subject to SWCAA 400-109.

All emission units covered by the provisions of this section are 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 meeting the applicability criteria listed in any part 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".

(2) **Agency notification.** An owner or operator who wishes to install a new emission unit under the provisions of this section must file a formal notification with the Agency for each emission unit. Notification shall be performed using forms developed by the Agency for that purpose. The notifi-

cation must include documentation sufficient to positively identify the affected emission unit, establish applicability under this section, and demonstrate compliance with applicable requirements. Required information includes, but is not limited to, the following:

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);
- (c) Equipment specifications (make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);
- (d) Control equipment specifications;
- (e) Vendor performance guarantees; and
- (f) Operational information (hours of operation, maximum product throughput, fuel consumption, etc.).

(3) **Processing fee.** Each notification shall be accompanied by the payment of a processing fee of \$250.00. This fee shall be paid for each piece of equipment subject to notification.

(4) Source categories.

(a) Coffee roasters.

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of 10 pounds or greater, but less than 100 pounds of green coffee beans per batch.

(ii) Emission limits and standards.

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

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

(iii) General requirements.

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

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

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

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

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

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

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding build-

ings. Any device that obstructs or prevents vertical discharge is prohibited.

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

(A) Afterburner operating temperature shall be recorded weekly;

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

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

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

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

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

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

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

(II) Quantity of coffee roasted; and

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

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

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale.

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

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

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry).

(iii) **General requirements.**

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

(B) Boiler/heater exhaust shall be discharged vertically above the roof peak of the building in which the emission unit is housed, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for

a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

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

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

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

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

(v) **Testing requirements.**

(A) Each boiler/heater shall undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring shall be conducted annually thereafter no later the end of the month in which the original monitoring was conducted. An alternate monitoring schedule may be implemented, but must be approved by the Agency prior to use. All emission monitoring shall be conducted in accordance with the requirements of SWCAA 400-106(2).

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

(vi) **Reporting requirements.**

(A) All air quality related complaints received by the owner or operator shall be reported to the Agency within 3 business days of receipt.

(B) Emission monitoring results for each boiler/heater shall be reported to the Agency within 15 calendar days of completion on forms provided by the Agency.

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

(I) Quantity of fuel consumed; and

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

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

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

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

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

(iii) General requirements.

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

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

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

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

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. Total engine operation shall not exceed 200 hours per year.

(F) Each engine shall be equipped with a nonresettable hourmeter for the purpose of documenting hours of operation.

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

(iv) Monitoring and recordkeeping requirements.

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

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

(B) Fuel sulfur certifications shall be recorded for each shipment of liquid fuel;

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

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

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

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

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

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

(I) Hours of engine operation; and

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

(d) **Petroleum dry cleaners.**

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

(ii) Emission limits and standards.

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

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(iii) General requirements.

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

(B) Dry cleaning machines shall only use approved cleaning fluids. The Agency has approved the use of DF-2000 cleaning fluid. Other cleaning fluids may be used upon written approval from the Agency.

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

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

(E) Perceptible leaks shall be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts shall be ordered within 2 business days of detecting the leak and repair parts shall be installed within 5 business days after receipt.

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

(iv) Monitoring and recordkeeping requirements.

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

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

(I) Hose connections, unions, couplings and valves;

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

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

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

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results

of any subsequent investigation or corrective action shall be recorded for each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

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

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

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

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

(e) **Rock crushers and aggregate screens.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens installed as part of a previously permitted rock crushing operation.

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

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

(iii) **General requirements.**

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

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

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

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

(E) For portable rock crushing operations, the owner or operator shall notify all property owners immediately adjacent to a new job site a minimum of 10 business days in advance of the intended relocation. Such written notification shall include a complete description of the proposed operation, the emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and contact information for the Agency. Response from adjacent landowners shall be directed to the Agency. Authorized operations are dependent on the receipt of public response regarding the proposed relocation.

(F) For portable rock crushing operations, the owner or operator shall notify the Agency at least 10 business days in

advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

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

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

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

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

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

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

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

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the requirements of 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants."

(vi) **Reporting requirements.**

(A) All air quality related complaints received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

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

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

(II) Air emissions of criteria air pollutants.

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 error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055, filed 2/15/01, effective 3/18/01)

SWCAA 400-074 Gasoline Transport Tanker(s) Registration

[Statutory Authority: Chapter 70.94.141 RCW; refer to WAC 173-491-040. Original adoption 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) Each owner(s) and/or operator(s) of a gasoline transport tank doing business within ~~(the designated ozone non-~~

~~attainment area or ozone maintenance plan area of~~) SWCAA jurisdiction shall register the transport tank with SWCAA prior to being placed into service. Such registration shall be made annually with SWCAA.

(2) Each registered gasoline transport tanker shall pay an annual registration fee in accordance with the schedule provided in SWCAA 400-100 (3)(a)(~~(+)~~). Each transport tanker shall have its own registration sticker, certification test and shall be assessed a separate registration fee.

(3) Prior to registration, SWCAA shall review the leak test certification documentation from the testing company required under SWCAA 490-202(3). Upon demonstration of a successful leak test and payment of registration fees, SWCAA shall issue a registration sticker that shall be applied to the tanker.

(4) The owner(s) and/or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid SWCAA registration sticker is displayed on the tank(s).

(5) Each owner(s) and/or operator(s) of a petroleum product transport tank doing business within SWCAA jurisdiction shall notify SWCAA of a change in status of a tanker. Change in status shall include sale, operating only out of SWCAA jurisdiction, out of service, or other similar change. Such notification shall be made in writing to SWCAA within 10 days of the change of status.

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) The national emission standards for hazardous air pollutants promulgated by EPA as in effect (~~(July 1, 2006)~~) January 1, 2009, as contained in 40 CFR Part 61, are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency. A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(2) The Agency may require that emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, Part 63, or Part 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the

requirements of 40 CFR Part 61, Part 63 and/or Part 65, as in effect on (~~(July 1, 2006)~~) January 1, 2009.

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

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

(a) As of (~~(July 1, 2006)~~) January 1, 2009, 40 CFR Part 63 and appendices are hereby adopted by reference. (~~The following~~) A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes(~~(:)~~).

~~(Subpart A National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions (ref. 40 CFR 63.1 et seq.)~~

~~Subpart B National Emission Standards for Hazardous Air Pollutants for Source Categories: Equivalent Emission Limitation By Permit (ref. 40 CFR 63.50 et seq.)~~

~~Subpart D National Emission Standards for Hazardous Air Pollutants for Source Categories: Early Reduction Program (ref. 40 CFR 63.70 et seq.)~~

~~Subpart F National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)~~

~~Subpart G National Emission Standards for 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 National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)~~

~~Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)~~

~~Subpart J National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)~~

~~Subpart L National Emission Standards for Hazardous Air Pollutants for Coke Oven Operations (ref. 40 CFR 63.300 et seq.)~~

~~Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities—as it applies to major sources (ref. 40 CFR 63.320 et seq.)~~

~~Subpart N National Emission Standards for Hazardous Air Pollutants from Hard and Decorative Electroplating and Anodizing Operations (ref. 40 CFR 63.340 et seq.)~~

~~Subpart O National Ethylene Oxide Air Emission Standards for Commercial Sterilizers (ref. 40 CFR 63.360 et seq.)~~

~~Subpart Q National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)~~

~~Subpart R National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Operations (Stage I) (ref. 40 CFR 63.420 et seq.)~~

~~Subpart S National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)~~

Subpart T National Emission Standards for Hazardous Air Pollutants for Halogenated Solvents Cleaning Operations (ref. 40 CFR 63.460 et seq.)

Subpart U National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting Manufacturing Operations (ref. 40 CFR 63.541 et seq.)

Subpart Y National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE National Emission Standards for Hazardous Air Pollutants for Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.710 et seq.)

Subpart GG National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing Operations (ref. 40 CFR 63.740 et seq.)

Subpart HH National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

Subpart LL National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)

Subpart MM National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart OO National Emission Standards for Tanks—Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP National Emission Standards for Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ National Emission Standards for Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR National Emission Standards for Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS National Emission Standards for Hazardous Air Pollutants for 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 National Emission Standards for Hazardous Air Pollutants for Equipment Leaks—Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU National Emission Standards for Hazardous Air Pollutants for Equipment Leaks—Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV National Emission Standards for Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW National Emission Standards for Hazardous Air Pollutants for Storage Vessels (Tanks)—Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT (ref. 40 CFR 63.1100 et seq.)

Subpart CCC National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (ref. 40 CFR 63.1211 et seq.)

Subpart GGG National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO National Emission Standards for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT National Emission Standards for Hazardous Air Pollutants for Primary Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV National Emission Standards for Hazardous Air Pollutants for Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart III National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJ National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT National Emission Standards for Hazardous Air Pollutants for Leather Tanning and Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYYY National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart ZZZZ National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)

Subpart AAAAA National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBBB National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)

Subpart EEEEE National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFFF National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGGG National Emission Standards for Hazardous Air Pollutants: Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHHHH National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

~~Subpart IIIH National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)~~

~~Subpart JJJJ National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)~~

~~Subpart KKKKK National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)~~

~~Subpart LLLL National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)~~

~~Subpart MMMM National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)~~

~~Subpart NNNNN National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)~~

~~Subpart PTTTT National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)~~

~~Subpart QQQQ National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)~~

~~Subpart RRRRR National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)~~

~~Subpart SSSSS National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)~~

~~Subpart TTTTT National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining (ref. 40 CFR 63.9880 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))~~

~~(b) Exceptions to 40 CFR Part 63 adoption by reference.~~

~~(i) The term "administrator" in 40 CFR Part 63 includes the Executive Director of the Agency.~~

~~(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:~~

~~(A) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;~~

~~(B) Subpart E, Approval of State Programs and Delegation of Federal Authorities; ((and))~~

~~(C) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to nonmajor sources((-));~~

~~(D) Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines;~~

(E) Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and

(F) Subpart XXXXXX, Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(6) Consolidated requirements for the synthetic organic chemical manufacturing industry. (SOCMI) 40 CFR Part 65, as in effect on ~~((July 1, 2006))~~ January 1, 2009, is adopted by reference.

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

AMENDATORY SECTION (Amending WSR 05-23-066, filed 11/15/05, effective 12/16/05)

SWCAA 400-100 Registration Requirements

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.151 RCW, 70.94.200 RCW, and 70.94.395 RCW. Original Board adoption 10/29/69 (Regulation 2 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-04-030 filed 1/28/92, effective 2/28/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-032 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05]

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 be registered with the Agency in accordance with this section as set forth in RCW 70.94.151 except the following:

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

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

Regardless of the exemptions provided above, gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and all dry cleaners with VOC or TAP emissions shall be registered.

(2) **General requirements.**

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

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall 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 or ordinance pur-

suant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall 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 be paid before the ~~((Control Officer))~~ Agency may register any emission unit. Annual registration fees ~~((cover the period from))~~ are based on the number of registered emission units and the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or emission units that permanently shutdown prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources." Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the following schedule:

| Emission Unit Fee | Pollution Emission Fee | Effective Date |
|-------------------------------------|---|-----------------|
| (\$75 per emission unit) | \$39/ton of criteria-pollutant emission, \$10/ton of toxic air-pollutant emission | July 1, 1999 |
| \$80 per emission unit | \$41/ton of criteria-pollutant emission, \$15/ton of toxic air-pollutant emission | January 1, 2006 |
| \$85 per emission unit | \$43/ton of criteria-pollutant emission, \$20/ton of toxic air-pollutant emission) | January 1, 2007 |
| \$90 per emission unit | \$45/ton of criteria-pollutant emission, \$25/ton of toxic air-pollutant emission | January 1, 2008 |

Exceptions:

(a) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.

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

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall 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 be considered delinquent. ~~((Air discharge permits and Orders of Approval for))~~ Pursuant to RCW 70.94.431(7), "sources" with delinquent registration fees may be ~~((invalidated by the Control Officer. The Agency shall notify the owner or operator of a "source" by certified letter prior to taking action to invalidate affected air discharge permits and Orders of Approval. Notification shall be provided in such a manner as~~

~~to allow the delinquency to be remedied prior to invalidation.))~~ subject to a penalty equal to three times the amount of the original fee owed.

(5) **Reporting requirements for transfer or permanent shutdown of registered "sources."**

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered "source" to the Agency within ~~((ninety (90)))~~ 90 calendar days of shutdown or transfer. The report shall 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 a registered "source" shall file a written report with the Agency within ~~((ninety (90)))~~ 90 calendar days of completing transfer of ownership and/or assuming operational control. The report shall 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, process and air pollution control equipment may remain in place and on site, but shall 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 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 70.94.200.

(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 refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

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

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 error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-101 Emission Units Exempt from Registration Requirements

[Statutory Authority: Chapters 70.94.141 RCW, 70.94.163 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 3.03); Amended by Board 12/18/79 (400-100(3)); Amended by Board 12/18/79; Amended by Board 4/17/84; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073, filed 11/13/06, effective 12/14/06]

(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. ~~((a))~~ The owner or operator of any emission unit exempted from registration under this section shall maintain documentation sufficient to verify that the emission unit is entitled to exemption under this section.

~~((b) Any emission unit exempted from registration under this section shall also be considered exempt from the requirements of SWCAA 400-046, 400-110, 400-111, 400-112, 400-113 and 400-114, except as provided in SWCAA 400-110(2)(b).) An exemption from new source review pursuant to SWCAA 400-109 shall not be construed as 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 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.** ~~((An exemption for an entire))~~ Δ "stationary source" shall be ((valid only)) exempt from registration if the ((emissions)) uncontrolled potential to emit from all emission units at that site or facility are less than all of the applicable ((exemption)) emission thresholds listed below. ((Whenever a "stationary source" exemption is determined by the quantity of annual emissions (tons per year), an emission unit's uncontrolled potential to emit shall be used as the basis for exemption.)) To qualify for an emission threshold exemption, the owner or operator shall 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 review and validate the submitted documentation prior to granting an exemption.

| <i>Pollutant</i> | <i>Exemption Threshold</i> |
|-----------------------------|--|
| Criteria pollutants and VOC | 1.0 tpy, combined |
| Lead | 0.005 tpy (10 lb/yr) |
| Ozone depleting substances | 1.0 tpy, combined <u>(as defined in SWCAA 400-030)</u> |

| <i>Pollutant</i> | <i>Exemption Threshold</i> |
|----------------------|--|
| Toxic air pollutants | 1.0 tpy (combined) or less than ((the)) applicable SQER ((as specified in)) <u>per Chapter 173-460 WAC, whichever is less.</u> |

- ~~(4) ((List of)) **Exempt equipment and activities((a)).**~~
 - ~~(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 ((spray equipment)) 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) Food preparation facilities, establishments or equipment (e.g., restaurants).)~~
 - ~~((h)) (g) Retail paint sales establishments (not including manufacturing).~~
 - ~~((i)) (h) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.~~
 - ~~((j)) (i) Sewing equipment.~~
 - ~~((k)) (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).~~
 - ~~((l)) (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 ((small quantity)) 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.~~
 - ~~((m)) (l) Residential wood heaters (e.g., fireplaces and woodstoves).~~
 - ~~((n)) (m) Office equipment, operations and supplies.~~
 - ~~((o)) (n) Internal combustion ((equipment including diesel)) engines used for ((standby)) emergency ((power generation)) service with a maximum aggregate power rating less than 200 horsepower.~~
 - ~~((p)) (o) Steam cleaning equipment used exclusively for that purpose.~~
 - ~~((q)) (p) Refrigeration systems that are not in air pollution control service.~~
 - ~~((r)) (q) Housekeeping activities and equipment.~~
 - ~~((s)) (r) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.~~

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

~~((u))~~ (t) Personal care activities.

~~((v))~~ (u) Lawn and landscaping activities.

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

~~((x))~~ (w) 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.

~~((y))~~ (x) 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.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

SWCAA 400-105 Records, Monitoring and Reporting

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 4/17/84 - renumbered to 400-170; Amended by Board (400-170) 12/16/86; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

The owner or operator of each registered or Title V "source" shall maintain records of the type and quantity of emissions from the "source" and other information deemed necessary to determine whether the "source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "sources" shall submit an inventory of emissions from the "source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter, PM₁₀, PM_{2.5}, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (~~(compounds)~~) (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) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Large "sources." At a minimum, "sources" satisfying the criteria of 40 CFR 51, Subpart Q will be submitted to EPA by the Agency for inclusion in the national emission database. The "sources" described below shall complete and

return the emission inventory form supplied by the Agency for this purpose by March 15. Upon written request, an extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis. 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" (~~(that)~~) 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 (~~(actual emissions or)~~) the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

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

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

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

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

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

(a) Fossil fuel-fired steam generators(-):

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

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

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

(d) Wood residue fuel-fired steam generators(-);

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

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

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on (~~July 1, 2002~~) January 1, 2009), 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) Subject to a New Source Performance Standard (NSPS). NSPS "stationary sources" shall be governed by SWCAA 400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A "source" may be temporarily exempted from the monitoring and reporting requirements of this section during periods of monitoring system malfunctions provided that the owner(s) or operator(s) shows to the satisfaction of the Agency that the malfunction was unavoidable and is being repaired as expeditiously as practicable as provided under SWCAA 400-107.

(5) **Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program.** Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWCAA 400-105(1) shall require the submittal of sufficient information to the Agency to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Agency may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

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

(7) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

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

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption - 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) Emission testing requirements.

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or emission unit within the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions.

(b) **Test methods.** Any required emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on (~~July 1, 2002~~) January 1, 2009), 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 provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an emission unit. The Agency shall be allowed to obtain a sample from any emission unit. The operator of the "source"

shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) **Notification/test plan submission.** The owner or operator of a "source" shall submit a test plan to the Agency in writing at least ~~((2 weeks-))~~ 10 business days ~~((+))~~ prior to any required emissions test or as otherwise approved by the Agency. Agency personnel shall be informed at least ~~((three))~~ 3 business days prior to testing so that they have an opportunity to be present during testing.

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

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

(g) **Test reports.** Results of all required emission testing shall be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable ~~((regulatory order))~~ air discharge permit. Test reports shall be submitted in both printed and electronic formats. Measured concentrations for combustion and incineration emission units shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The report shall include the following information:

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

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

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

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

(v) A summary of production related parameters;

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

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

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

(xi) Discussion of any abnormalities associated with the results; and

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

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

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

(b) **Monitoring method.** Emission monitoring ~~((shall))~~ may be performed with a portable analyzer or EPA reference methods. Alternative methodologies ~~((may))~~ must be preapproved by SWCAA.

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

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

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

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

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

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

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

~~((+))~~ (ii) Time and date of the emission monitoring;

~~((+))~~ (iii) Identification of the personnel involved;

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

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

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

~~((vi))~~ (vii) Calibration error check documentation.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

SWCAA 400-107 Excess Emissions

[Statutory Authority: Chapters 70.94.141 RCW, 70.94.431 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.07 & 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 5.07); 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Recordkeeping and reporting.** Excess emissions shall be reported to SWCAA as follows:

(a) Emissions that represent a potential threat to human health or safety ~~((, or))~~ shall be reported as soon as possible, but no later than 12 hours after discovery.

(b) Emissions which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery.

(c) All other excess emissions shall be reported within ~~((thirty))~~ 30 calendar days after the end of the month during which the event is discovered.

(d) Excess emission reports shall contain the following information:

~~((a))~~ (i) Identification of the emission unit(s) involved;

~~((b))~~ (ii) A brief description of the event;

~~((c))~~ (iii) Duration of the event; and

~~((d))~~ (iv) Anticipated corrective action to prevent or minimize excess emissions, if any.

Upon request by the Agency, the owner(s) or operator(s) of the "source" shall submit a full written report describing the known causes, the corrective actions taken, and the preventive measures implemented to minimize or eliminate the chance of recurrence.

(2) **Penalty exclusion for unavoidable excess emissions.**

(a) The owner or operator of a "source" shall have the burden of proving to the Agency or the Pollution Control Hearings Board in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under this section.

(b) Excess emissions determined by the Agency to be unavoidable under the procedures and criteria in this section shall be excused from penalty.

(c) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the "source" reports as required under subsection (1) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design, and if a bypass of control equipment occurs, that such bypass

is necessary to prevent loss of life, personal injury, or severe property damage.

(d) Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under subsection (1) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(e) Excess emissions due to upsets shall be considered unavoidable provided the "source" reports as required under subsection (1) of this section and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and

(iv) The owner's or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

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

AMENDATORY SECTION (Amending WSR 05-23-066, filed 11/15/05, effective 11/21/05 [12/16/05])

SWCAA 400-109 Air Discharge Permit Applications

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.152 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05]

(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 be identified as set forth in SWCAA 400-270.

(2) **Applicability.**

(a) An air discharge permit application shall 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 begin actual 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 ((or other similar determination)) BART, LAER).

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

(c) "Stationary sources" subject to the PSD program (WAC 173-400-((441)) 700 through 750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit a permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) 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 equal to \$300. 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 of \$70/hr. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified (~~(in SWCAA 400-101)~~) 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, 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 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 (~~(in SWCAA 400-101)~~) below, an air discharge permit application shall be submitted pursuant to this section.

(a) Sources subject to SWCAA 400-072. A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and proper notification has been submitted to SWCAA prior to installation or operation.

(b) 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> |
|--|--|
| <u>Criteria pollutants (other than PM_{2.5})</u> | <u>1.0 tpy (individual pollutant)</u> |
| <u>PM_{2.5}</u> | <u>0.5 tpy</u> |
| <u>VOC</u> | <u>1.0 tpy</u> |
| <u>Lead</u> | <u>0.005 tpy</u> |
| <u>Ozone depleting substances</u> | <u>1.0 tpy (combined)</u> |
| <u>Toxic air pollutants</u> | <u>1.0 tpy (combined) or below individual SOER per Chapter 173-460 WAC, whichever is less.</u> |

(c) Exempt equipment and activities.

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

(A) Relocation of portable equipment 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 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) Emergency service internal combustion engines manufactured after January 1, 2008 and individually rated at less than 200 horsepower. This exemption does not apply if the aggregate power rating of all internal combustion engines at the affected facility is greater than 500 horsepower.

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

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

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

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

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

(J) 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).

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

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

(M) Sewing equipment.

(N) 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).

(O) 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)(c). 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.

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

(Q) Office equipment, operations and supplies.

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

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

(T) Housekeeping activities and equipment.

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

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

(W) Personal care activities.

(X) Lawn and landscaping activities.

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

(Z) 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

(AA) 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.

(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.

((3)) (4) Fees. Before the Agency may review a permit application, the applicant shall submit all applicable fees as detailed in the following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee / Table A + Additional Review Fee / Table B (if applicable) + Major NSR Review Fee / Table C (if applicable)]

Filing Fee

A filing fee of \$500.00 shall be submitted for each permit application.

Legal Notice Fee

An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal

Notice ~~((to the general public through publication in the newspaper has the option of either paying a flat fee of \$160.00 at the time of submittal or being invoiced later. If the applicant chooses to be invoiced later, the total fee))~~ pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus ((a \$100.00 fee)) \$70 to compensate for the staff time required to prepare, mail and invoice ~~((for))~~ the public notice.

Permit Application Review Fee

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

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 processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent on the accuracy/completeness of the application and the responsiveness of the applicant.

Additional/Major NSR Review Fees

If additional types of review, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay ~~((the applicable))~~ an additional review fee as specified in those Tables. The review fees identified in Tables B and C are cumulative.

TABLE A
Permit Application Review Fees

| Equipment/Activity | Associated Work Hours | Review Fee |
|--|-----------------------|------------|
| i. Fuel burning equipment (Million Btu/hr heat input @ design capacity): | | |
| 0.4 or more but less than 5 | 8 | \$ 600.00 |
| 5 or more but less than 10 | 10 | 700.00 |
| 10 or more but less than 30 | 12 | 850.00 |
| 30 or more but less than 50 | 14 | 1,000.00 |
| 50 or more but less than 100 | 17 | 1,200.00 |
| 100 or more but less than 250 | 35 | 2,500.00 |

| | Equipment/Activity | Associated Work Hours | Review Fee |
|-------|--|---|------------------------------|
| | 250 or more but less than 500 | 57 | 4,000.00 |
| | 500 or more | 85 | 6,000.00 |
| | Change in fuel type | One half of the applicable fee listed above | |
| ii. | Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM): | | |
| | Less than 50 | 8 | \$ 600.00 |
| | 50 or more but less than 5,000 | 10 | 700.00 |
| | 5,000 or more but less than 20,000 | 11 | 800.00 |
| | 20,000 or more but less than 50,000 | 12 | 900.00 |
| | 50,000 or more but less than 100,000 | 13 | 950.00 |
| | 100,000 or more but less than 250,000 | 14 | 1,000.00 |
| | 250,000 or more but less than 500,000 | 28 | 2,000.00 |
| | 500,000 or more | 57 | 4,000.00 |
| iii. | Refuse burning equipment (Incinerators) (Tons/day capacity): | | |
| | Less than 0.5 | 10 | \$700.00 |
| | 0.5 or more but less than 5 | 11 | 800.00 |
| | 5 or more but less than 12 | 14 | 1,000.00 |
| | 12 or more but less than 50 | 42 | 3,000.00 |
| | 50 or more | 85 | 6,000.00 |
| iv. | Storage tanks, reservoirs, or containers (Gallons-total capacity): (Other than gasoline or diesel fuel dispensing facilities): | | |
| | 250 or more but less than 10,000 | 8 | \$ 600.00 |
| | 10,000 or more but less than 40,000 | 14 | 1,000.00 |
| | 40,000 or more but less than 100,000 | 21 | 1,500.00 |
| | 100,000 or more | 28 | 2,000.00 |
| v. | Gasoline dispensing facilities: | | |
| | Stage I | 8 | \$ 600.00 |
| | Stage II | 10 | 700.00 |
| | Stages I & II, combined | 11 | 800.00 |
| | Toxics review for gasoline facility | 21 | 1,500.00 |
| | Stage II removal | 8 | 600.00 |
| vi. | Other: (Not classified in Subsection i., ii., iii., iv. or v. above) | | \$200.00 per ton of emission |
| vii. | Toxic air contaminants | | \$200.00 per ton of emission |
| viii. | Complex stationary source or modification: | 85 | \$ 6,000.00 |
| ix. | Synthetic minor application: (Including, but not limited to: Title V, HAP) | 35 | \$ 2,500.00 |
| x. | Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year): | | |
| | Less than or equal to 10 | 8 | \$ 600.00 |
| | More than 10 but less than or equal to 50 | 14 | 1,000.00 |
| | More than 50 but less than or equal to 100 | 21 | 1,500.00 |
| | More than 100 but less than 250 | 35 | 2,500.00 |
| | 250 or greater | 85 | 6,000.00 |
| xi. | Minor modifications to existing permit conditions: | 8 | \$ 600.00 |

| | Equipment/Activity | Associated Work Hours | Review Fee |
|-----------------------|--|-----------------------|------------------------|
| xii. | ((Temporary, substitute, or emergency Sources)) | ((Small 11 | \$ 800.00)) |
| | | ((Large 21 | 1,500.00)) |
| ((xiii.)) | Dry cleaner | 8 | \$ 600.00 |
| ((xiv.)) | ((Diesel engine generators/pumps) Internal combustion engines (Aggregate horsepower rating): | | |
| xiii. | ((Less than 100 | 8 | \$ 600.00)) |
| | ((100 or more but)) Less than 500 | 10 | 700.00 |
| | 500 or more but less than 2,000 | 14 | 1,000.00 |
| | 2,000 or more but less than 5,000 | 21 | 1,500.00 |
| | 5,000 or more but less than 10,000 | 42 | 3,000.00 |
| | 10,000 or more | 85 | 6,000.00 |
| ((xv.)) | Crematory/small incinerators/small flares: | 10 | \$ 700.00 |
| xiv. | Gluing/flow coating operations without active ventilation: | 11 | \$800.00 |
| ((xvi.)) | Soil/groundwater remediation: | 11 | \$ 800.00 |
| xv. | | | |
| ((xvii.)) | Composting facilities (Average material throughput - tons per day): | | |
| xvi. | Less than 50 | 8 | \$ 600.00 |
| ((xviii.)) | 50 or more but less than 100 | 14 | 1,000.00 |
| xvii. | 100 or more but less than 200 | 21 | 1,500.00 |
| | 200 or more but less than 500 | 42 | 3,000.00 |
| | 500 or more | 85 | 6,000.00 |
| ((xix.)) | Coffee roasters: | 10 | \$ 700.00 |
| xviii. | | | |
| ((xx.)) | ((Emergency application - Double normal application and review fee)) Municipal wastewater treatment plants: (Million gallons per day - annual average design capacity.) | | |
| xix. | More than 1 but less than 5 | 11 | \$ 800.00 |
| | 5 or more but less than 10 | 21 | 1,500.00 |
| | 10 or more | 35 | 2,500.00 |

**TABLE B
Additional Review Fees**

| | Equipment/Activity | Associated Work Hours | Review Fee |
|-----------------------|---|-----------------------|------------------------|
| ((xxi.)) | Emission offset analysis or bubble: | 10 | \$ 700.00 |
| xx. | | | |
| ((xxii.)) | Emission reduction credit (ERC) application: | 10 | \$ 700.00 |
| xxi. | (Deposit or withdrawal) | | |
| ((xxiii.)) | State environmental policy act (SEPA) - lead agency: | | |
| xxii. | | | |
| | Minor | 14 | \$ 1,000.00 |
| | Major | 35 | 2,500.00 |
| ((xxiv.)) | Environmental impact statement (EIS) review: | | |
| xxiii. | | | |
| | Minor | 11 | \$ 800.00 |
| | Major | 28 | 2,000.00 |
| ((xxv.)) | RACT/BACT/MACT/BART/LAER determination: | | \$ 70.00/hr |
| xxiv. | | | |
| ((xxvi.)) | Variance request: | 11 | \$ 800.00 |
| xxv. | | | |

| | | |
|--|--|--------------------------|
| ((xxvii)) xxvi. | Review of ambient impact analysis: | \$ 70.00/hr. |
| ((xxviii)) 70.105D.090: | Review of projects under RCW | \$ 70.00/hr) |
| ((xxix)) xxvii. | Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1): | \$ 70.00/hr |

**TABLE C
Major NSR Review Fees**

| | Equipment/Activity | Associated Work Hours | Review Fee |
|--|--|------------------------------|--------------------------|
| ((xxx)) xxviii. | Plantwide applicability limitations: | 142 | \$ 10,000.00 |
| ((xxxi)) xxix. | Clean unit/pollution control project designations: | 71 | \$ 5,000.00) |

~~((4))~~ **(5) Agency actions.** Each complete air discharge permit application shall result in the issuance of an air discharge permit or other applicable order or confirmation of exempt status by the Agency. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Demonstration of completion of an environmental checklist as provided in WAC 197-11 shall be submitted with each air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit a copy of that agency's SEPA determination. Issuance of air discharge permits or regulatory orders for all air discharge permit applications shall be consistent with the requirements of SWCAA 400-110.

~~((5))~~ **(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 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 ~~((400-100 and))~~ 400-110 if it meets the exemption criteria provided in SWCAA 400-~~((101))~~ 109(3). The Agency shall 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 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: 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 bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

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

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.152 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-06-015 filed 2/25/92, effective 3/25/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-030 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) Applicability.

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

(b) Review of a modification shall be limited to the emission unit(s) proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113 and/or WAC 173-400-~~((141))~~720.

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

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-~~((101))~~109(3). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section; and

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

(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, not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-~~((080))~~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-~~((080))~~150. The material change may not cause an existing emission limit to be exceeded.

(2) Requirements.

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

(b) Regardless of any other provision of this section~~((; 400-101))~~ or 400-109, all review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any of the following:

~~((i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Part AAA, Wood stoves (as in effect on July 1, 2002);~~

~~(ii) Any project that qualifies as a new or modified "stationary source" within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants as in effect on July 1, 2002), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;~~

~~(iii) Any project that qualifies as a "new source" within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories as in effect on July 1, 2002);)~~

~~((iv)) (i) Any project that qualifies as a new major stationary source, or a major modification; or~~

~~((v)) (ii) 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(~~(- ambient air increments)~~) and ambient air qual-

ity standards (See Table A below). A completed (~~(environmental)~~) SEPA checklist or (~~(a completed)~~) determination, as provided in Chapter 197-11 WAC, shall be submitted with each application. 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 (i.e., changes in ambient concentrations resulting from the proposed project or modification alone) is predicted to be less than the applicable ambient air increments, the air quality analysis is complete at that point.)~~) If the ambient impact of a proposed project could potentially exceed (~~(the)~~) an applicable ambient air increment(~~(s)~~), the Agency may require that the applicant (~~(shall)~~) demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on (~~(July 1, 2002)~~) January 1, 2009). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

TABLE A -
Emission Concentration Regulatory Standards

| Pollutant | Averaging Period | Ambient Air Increment <i>40 CFR 51.166(c)</i> | | National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i> | | State Ambient Air Quality Standards <i>173-470, 474, and 475 WAC</i> |
|--|---|--|-------------------------------|---|---|---|
| | | Class I µg/m ³ | Class II µg/m ³ | Primary Standard µg/m ³ (ppm) | Secondary Standard µg/m ³ (ppm) | Ambient Standard µg/m ³ (ppm) |
| Carbon Monoxide (CO) | 8-Hour | — | — | 10,000 ^b (9.0) | — | 10,000 ^b (9.0) |
| | 1-Hour | — | — | 40,000 ^b (35.0) | — | 40,000 ^b (35.0) |
| Nitrogen Dioxide (NO ₂) | Annual ^a (arithmetic mean) | 2.5 | 25 | 100(0.05) | 100(0.05) | 100(0.05) |
| Ozone (O ₃) | 1-Hour ^e | — | — | (0.12) | (0.12) | (0.12) |
| | 8-Hour ^f | — | — | ((0.08)) (0.075) | ((0.08)) (0.075) | — |
| Sulfur Dioxide (SO ₂) | Annual ^a | 2 | 20 | 80(0.03) | — | 53(0.02) |
| | 24-Hour | 5 | 91 | 365 ^b (0.14) | — | 260 ^b (0.10) |
| | 3-Hour | 25 | 512 | — | 1,300 ^b (0.50) | — |
| | 1-Hour | — | — | — | — | 1,065 ^b (0.40) ^d |
| Lead | Quarterly Average | — | — | 1.5 | 1.5 | 1.5 |
| ((Total Suspended Particulates (TSP))) | ((Annual^a- (geometric mean))) | — | — | — | — | ((60)) |
| | ((24-Hour)) | — | — | — | — | ((150^b)) |
| Particulate Matter less than 10 µm (PM ₁₀) | Annual (arithmetic mean) | 4 | 17 | ((50)) | ((50)) | 50 |

| Pollutant | Averaging Period | Ambient Air Increment <i>40 CFR 51.166(c)</i> | | National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i> | | State Ambient Air Quality Standards <i>173-470, 474, and 475 WAC</i> |
|--|--|--|-------------------------------|---|---|---|
| | | Class I µg/m ³ | Class II µg/m ³ | Primary Standard µg/m ³ (ppm) | Secondary Standard µg/m ³ (ppm) | Ambient Standard µg/m ³ (ppm) |
| | 24-Hour ⁱ | 8 | 30 | 150 ^b | 150 ^b | 150 ^b |
| Particulate Matter less than 2.5 µm (PM _{2.5}) | Annual ^g (arithmetic mean) | — | — | 15 | 15 | — |
| | 24-Hour ^h | — | — | ((65)) <u>35</u> | ((65)) <u>35</u> | — |

µg/m³ = micrograms per cubic meter; ppm= parts per million

^a Never to be exceeded.

^b Not to be exceeded more than once per year.

^c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.

^d Also, 0.25 ppm not to be exceeded more than twice in seven days.

^e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.

^f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.

^g Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.

^h Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.

ⁱ Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.

Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted.

Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" shall demonstrate that all applicable requirements of SWCAA 400-141 and WAC 173-400-~~((141))~~ 700 through 750 have been met.

(e) 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.

(3) Application completeness determination. Within ~~((thirty (30)))~~ 30 calendar days of receipt of an air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application as provided under RCW 70.94.152.

(a) For an application subject to PSD review under WAC 173-400-~~((141))~~ 700, a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(b) For an application subject to Special Protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

(4) Final determination.

(a) Within ~~((sixty (60)))~~ 60 calendar days of receipt of a complete application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the application required by this section. An application designated for integrated review shall be processed in accordance with Chapter 173-401 WAC procedures and deadlines. A PSD permit application under WAC 173-400-~~((141))~~ 700 or an air discharge permit application for a "major modification" or a "major stationary source" in a nonattainment area must also comply with SWCAA 400-171 and WAC 173-400-171, as applicable. 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.

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

(c) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall be reviewed and signed prior to issuance.

ance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

~~((e))~~ (d) If the "new source" is a "major stationary source" or the proposed modification is a "major modification," the Agency shall submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

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

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

(a) The affected emission units are registered with the Agency.

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

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location at least ~~((ten))~~ 10 business days prior to starting the operation.

(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.

(e) Landowners and residents of immediately adjacent properties are notified by the owner(s) or operator(s) of the "portable equipment" in writing at least 10 business days prior to commencement of operations at the proposed location. Copies of the notification letters shall be mailed to the Agency. Written notification to the adjacent landowners and residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and the address and phone number for SWCAA. Written notification shall indicate that all comments shall be directed to the Agency.

"Portable equipment" that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be considered to be permanently shutdown and will be removed from active registration. Any "portable equipment" removed from active registration shall be required to submit a new permit application and undergo review as a "new

source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air discharge permit issued pursuant to this section shall be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. ~~((The Agency may extend the eighteen month period upon a satisfactory demonstration that an extension is justified. An extension for a PSD permit must be approved by Ecology, and comply with the public notice requirements in WAC 173-400-171.))~~ This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. To obtain an extension the permittee must submit a written request to the Agency at least 60 calendar days prior to permit expiration. The request shall clearly identify the justification for an extension and include relevant supporting information. The Agency will review all submitted information, and then approve or deny the request in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency shall provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology, and comply with the public notice requirements in WAC 173-400-171.

(9) **Change of conditions.**

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

(i) The change will not cause ~~((the))~~ an applicable emissions limit or standard 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 and 400-113, 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) A request to change approval/permit conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109(3) shall apply to these requests.

(10) **Reopening for cause.** The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-115 Standards of Performance for New Sources

[Statutory Authority: Chapter 70.94.141 RCW. Originally adopted by Board 12/18/79; Amended by Board 4/17/84 (renumbered to 400-135); Amended by Board 12/16/86; 93-16-007 filed 7/22/93, effective 8/22/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices as in effect on ~~((July 1, 2006))~~ January 1, 2009 are adopted by reference. The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). ~~((The following list of affected subparts))~~ A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.~~((:))~~

~~((Subpart A General provisions (ref. 40 CFR 60.1 et seq.)~~

~~Subpart D Fossil fuel fired steam generators for which construction is commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40 et seq.)~~

~~Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978,~~

~~which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40a et seq.)~~

~~Subpart Db Industrial-commercial-institutional-steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts (ref. 40 CFR 60.40b et seq.)~~

~~Subpart De Small industrial-commercial-institutional steam generating units (ref. 40 CFR 60.40e 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 for which construction is commenced after June 20, 1996 (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 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 which produce less than 25,000 barrels per day of refined products (ref. 40 CFR 60.100 et seq.)~~

~~Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons (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) constructed, reconstructed, or modified 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 Brass and bronze ingot production plants (ref. 40 CFR 60.130 et seq.)~~

~~Subpart N Iron and steel plants (ref. 40 CFR 60.140 et seq.)~~

~~Subpart Na Secondary emissions from basic oxygen process steel making facilities (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 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 (ref. 40 CFR 60.270 et seq.)~~

~~Subpart AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (ref. 40 CFR 60.270a et seq.)~~

~~Subpart BB Kraft pulp mills (ref. 40 CFR 60.280 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 Industrial surface coating: 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 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 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 Industrial surface coating: Metal coils (ref. 40 CFR 60.460 et seq.)~~

~~Subpart UU Asphalt processing and asphalt roofing manufacture (ref. 40 CFR 60.470 et seq.)~~

~~Subpart VV Synthetic Organic Chemical Manufacturing Industry equipment leaks (VOC) (ref. 40 CFR 60.480 et seq.)~~

~~Subpart WW Beverage can surface coating operations (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 Petroleum refineries—compressors and fugitive emission sources (ref. 40 CFR 60.590 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 (ref. 40 CFR 60.630 et seq.)~~

~~Subpart LLL Onshore natural gas processing; SO₂ emissions (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 waste water emissions (ref. 40 CFR 60.690 et seq.)~~

~~Subpart RRR Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) 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 constructed, reconstructed or modified on or after May 30, 1991 (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991) (ref. 40 CFR 60.750 et seq.)~~

~~Subpart AAAA Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed 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 incinerators constructed after November 30, 1999; or modified or reconstructed on or after June 1, 2001 (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 Standards of Performance for Other Solid Waste Incineration Unit 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 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.)~~

~~Subpart HHHH Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)~~

~~Subpart KKKK Standards of Performance for Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)~~

~~Appendix A Test methods (ref. 40 CFR 60, Appendix A)~~

~~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)~~

~~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))~~

(Note:) Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115.

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

(a) 40 CFR 60.5 Determination of construction or modification

(b) 40 CFR 60.6 Review of plans

(c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)

(d) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)

(e) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)

(f) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)

(g) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)

(h) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)

(i) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

(j) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

(k) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)

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 material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-130 Use of Emission Reduction Credits

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by Board 12/16/86; Amended by Board 9/21/93; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Agency. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date, fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reduction credits shall revert back to the Agency. The Agency may keep said credits in a credit bank to be used by the Agency in the best interest of the area or credits may be dissolved by the Agency.

(2) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under SWCAA 400-120, as a part of a determination of "net emissions increase," or as an offsetting reduction to satisfy the requirements for new source review per SWCAA 400-111, 400-112, or 400-113(3). The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(3) **Conditions of use.** An ERC may be used only for the air contaminant(s) for which it was issued and in the area for which it was issued except in the case of transportable pollutants, which will be determined on a case-by-case basis and per interagency agreement for interstate transfers. The Agency may impose additional conditions of use of ERCs to account for temporal and spatial differences between the emission unit(s) that generated the ERC and the emission unit(s) that use the ERC. An ERC may not be used in place of a growth allowance as required under SWCAA 400-111.

(4) **Procedures to use ERC.**

(a) **Individual use.** When an ERC is used under subsection (2) of this section, an application must be submitted to the Agency and the Agency must issue a regulatory order for use of the ERC(s).

(b) **Sale or transfer of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Agency. After receiving an application, the Agency shall reissue a regulatory order to the new owner. The Agency shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.

(5) **Expiration of ERC.** An unused ERC and any unused portion thereof shall expire five years after the date the emission reduction was accomplished and not the date of the regulatory order.

(6) **Maintenance of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Originally adopted by Board as 400-120 on 3/20/84; renumbered to 400-131 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The owner(s) or operator(s) of any "stationary source" may apply to the Agency for an emission reduction credit (ERC) if the "stationary source" proposes to reduce its actual emission rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emission unit(s) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within (~~one hundred eighty~~) 180 calendar days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Agency.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule.

(b) The quantity of emission reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. For the purposes of this regulation, the old actual emission rate shall be defined as the highest annual emission rate during either of the last two full calendar years.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emission reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emission unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWCAA 400-112(5) nor as part of a bubble transaction under SWCAA 400-120 nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard.

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the "stationary source" or emission unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within (~~thirty~~) 30 calendar days after the receipt of an ERC application, supporting data and documentation, the Agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within (~~sixty~~) 60 calendar days after all required information has been received, the Agency shall approve or deny the application, based on a finding that conditions in subsections (3)(a) through (g) of this section have been satisfied or not. If the application is approved, the Agency shall:

(a) Issue a regulatory order (~~(or equivalent document)~~) pursuant to this section to assure that the emissions from the "source" will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order (~~(or equivalent document)~~) shall include any conditions required to assure that subsections (3)(a) through (g) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order (~~(or equivalent document)~~) must prohibit operation of the affected equipment; and,

(b) Issue a regulatory order with emission reduction credit. The regulatory order shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the regulatory order is issued.

(6) **Maintenance and use of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/9/03)

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Original Board adoption as 400-125 4/17/84; renumbered to 400-136 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) Conditions for ERC bank.

(a) ERCs established under SWCAA 400-131 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be available for public allocation unless specifically requested by the owner(s) of the ERCs or the owner of the ERCs fails to maintain registration with the Agency.

(3) Maintenance of the bank.

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10 percent to allow for minor emission increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10 percent without compensation to the holder after public involvement pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The ~~((Control Officer))~~ Agency shall not provide greater than 25 percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the ~~((Control Officer))~~ Agency issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or emission unit the remaining amount of the emission reduction credit shall be reviewed by the ~~((Control Officer))~~ Agency and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the ~~((Control Officer))~~ Agency shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduc-

tion credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington SIP review. The results of the review shall be reported to the Board with recommendations for correction if the ~~((Control Officer))~~ Agency deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) Expiration of public credits.

(a) Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the shutdown of the Carborundum facility expired on July 8, 1996 as provided in Regulatory Order SWCAA 86-843 which established such credits.

(b) Emission reduction credits deposited in the bank for public allocation as the result of Board Resolution 1988-3 amended by Board Resolution 1989-3 expired on January 24, 1999.

(c) Credits and regulatory orders/certificates assigned to "stationary sources" from this public bank expired on July 8, 1996.

(d) Each "stationary source" which had credits assigned from the public bank by issuance of a regulatory order shall be approved for the total of previous emissions plus any additional amount approved under a regulatory order assigning public credits to that "stationary source" effective July 8, 1996.

(e) Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-171 Public Involvement

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) Public notice.

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions. Notice shall be published for a minimum of ~~((fifteen (15) consecutive))~~ 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum

of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination on the affected action for a minimum of 15 calendar days following the date of publication. Each notice shall, at a minimum, include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposed action;

(iii) Agency contact information;

(iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and

(v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter~~(s)~~ or fax~~(s) or electronic mail~~). A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not ~~(requested)~~ provided may be processed without further public involvement.

(2) Mandatory public comment period.

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

~~((i)) Any air discharge permit application for a new or modified "stationary source" or emission unit that results in a significant net increase in emissions (actual or potential to emit) of any air contaminant regulated by state or federal law;~~

~~((ii)) (i)~~ Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on July 1, 2002) as part of review under SWCAA 400-046 or 400-110;

~~((iii)) (ii)~~ Any order or permit to determine RACT;

~~((iv)) (iii)~~ Any order or permit to establish a compliance schedule or a variance. A variance shall be handled as provided in SWCAA 400-180;

~~((v)) (iv)~~ Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

~~((vi)) (v)~~ Any order or permit to authorize a bubble;

~~((vii)) (vi)~~ Any order or permit used to establish a creditable emission reduction;

~~((viii)) (vii)~~ An Order of Discontinuance as provided in SWCAA 400-230 (1)(g);

~~((ix)) (viii)~~ Any order ~~(issued under SWCAA 400-091 which establishes limitations on a "stationary source's" potential to emit)~~ or permit used to establish a "synthetic minor";

~~((x)) (ix)~~ Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

~~((xi)) (x)~~ Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

~~((xii)) (xi)~~ Any ~~(nonroad engine permit application, air discharge permit application or other)~~ proposed action for which the ~~(Control Officer)~~ Executive Director determines there is a substantial public interest~~(s)~~ including:

• Air discharge permit applications

• Nonroad engine permit applications

• Other actions of significance

(b) Any air discharge permit application designated for integrated review that includes a PSD permit application, an application for a "major modification" in a nonattainment area, or an application for a "major stationary source" in a nonattainment area must also comply with the public notice requirements of WAC 173-400-171.

(3) **Public comment period.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be published in a newspaper of general circulation in the area of the proposed project for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to subsections (2)(a)~~((xii)) (x)~~ or (2)(a)~~((xiii)) (xi)~~ of this section, publication on the SWCAA Internet homepage for a minimum of ~~((thirty (30)))~~ 30 calendar days may be substituted for newspaper publication. Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposal;

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

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

(v) A statement that a public hearing may be held if the Agency determines within a ~~((thirty (30)))~~ 30 calendar day period that significant public interest exists;

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

(vii) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's decision.

(c) EPA Notification. A copy of the comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Agency may hold a public hearing if the ~~((Control Officer))~~ Executive Director determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

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

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

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 error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 400-160 4/17/84 (Refer to WAC 403); Amended by Board 92-04-030 filed 1/28/92; Amended by Board and renumbered to 400-200 in 93-21-005 filed 10/7/93, effective 11/8/93, original 400-200 was renumbered to 400-230; 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-057 filed 2/15/01, effective 3/18/01; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks shall be configured to discharge vertically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks shall 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.

(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 con-

structed, 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 the 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. 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 apply 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 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 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 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.

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.

NEW SECTION

APPENDIX C FEDERAL STANDARDS ADOPTED BY REFERENCE

[Statutory Authority: Chapter 70.94.141 RCW]

The following lists of affected subparts is 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 for Which Construction is Commenced After August 17, 1971, and Prior to September 19, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units for Which Construction Commenced After June 19, 1984, and Prior to June 19, 1986, Which Have a Heat Input Greater Than 29 Megawatts but less Than 73 Megawatts (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 for Which Construction is Commenced After June 20, 1996 (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 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 Which Produce Less Than 25,000 Barrels per Day of Refined Products (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 Constructed After June 11, 1973, and Prior to May 19, 1978, Which Have a Capacity Greater Than 40,000 Gallons (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) Constructed, Reconstructed, or Modified 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 Brass and Bronze Ingot Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N Iron and Steel Plants (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steel Making Facilities (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 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 (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 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 Industrial Surface Coating: 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 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 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 Industrial Surface Coating: Metal Coils (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 Operations (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 Petroleum Refineries - Compressors and Fugitive Emission Sources (ref. 40 CFR 60.590 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 (ref. 40 CFR 60.630 et seq.)

Subpart LLL Onshore Natural Gas Processing; SO₂ Emissions (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 Waste Water Emissions (ref. 40 CFR 60.690 et seq.)

Subpart RRR Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) 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 Constructed, Reconstructed or Modified on or After May 30, 1991 (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 AAAA Small Municipal Waste Combustion Units Constructed After August 30, 1999, or Modified or Reconstructed 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 Incinerators Constructed After November 30, 1999; or Modified or Reconstructed on or After June 1, 2001 (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 Unit 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 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.)

Subpart HHHH Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart KKKK Standards of Performance for Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

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)

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 B Radon Emissions from Underground Uranium Mines (ref. 40 CFR 61.20 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 H Emissions of Radionuclides Other Than Radon from Department of Energy Facilities (ref. 40 CFR 61.90 et seq.)

Subpart I Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and not Covered by Subpart H (ref. 40 CFR 61.100 et seq.)

Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)

Subpart K Radionuclide Emissions from Elemental Phosphorus Plants (ref. 40 CFR 61.120 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 Q Radon Emissions from Department of Energy Facilities (ref. 40 CFR 61.190 et seq.)

Subpart R Radon Emissions from Phosphogypsum Stacks (ref. 40 CFR 61.200 et seq.)

Subpart T Radon Emissions from the Disposal of Uranium Mill Tailings (ref. 40 CFR 61.220 et seq.)

Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

Subpart W Radon Emissions from Operating Mill Tailings (ref. 40 CFR 61.250 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 B Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(G) and 112(J) (ref. 40 CFR 63.50 et seq.)

Subpart D Compliance Extensions for Early Reductions of Hazardous Air Pollutants (ref. 40 CFR 63.70 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 Air Emission Standards for Dry Cleaning Facilities (*as it applies to major sources only*) (ref. 40 CFR 63.320 et seq.)

Subpart N Hard and Decorative Chromium Electroplating and Chromium Anodizing Operations (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 OO Tanks - Level I (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 (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 Ferrous Alloys 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 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 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 IIIII 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/Standards (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 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 BBBBB 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 LLLLL 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 NNNNN 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 PPPPP Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart WWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 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: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

WSR 09-22-047

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 28, 2009, 3:18 p.m., effective November 28, 2009]

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

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is (1) eliminating the coverage of the following items for adults - bathroom and shower equipment, disinfectant sprays, surgical stockings, custom vascular supports, graduated compression stockings, and blood pressure monitoring equipment; (2) reducing coverage of the following items for adults and children: Nonsterile and sterile gloves, incontinent supplies, and diabetes test supplies (lancets and test strips); and (3) adding light boxes, bumper pads, surgical masks, and handheld showers to the noncovered list.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-543-2300; and amending WAC 388-543-1150, 388-543-1300, and 388-543-1600.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

Other Authority: RCW 74.04.050, 74.04.057, 74.08.-090.

Adopted under notice filed as WSR 09-16-039 on July 28, 2009.

A final cost-benefit analysis is available by contacting Erin Mayo, DSHS/HRSA, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail erin.mayo@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: October 28, 2009.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-1150 Limits and limitation extensions.

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month; or

(e) ~~((Disinfectant spray - one twelve-ounce bottle or can per six-month period; or~~

~~(f))~~ Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.

(2) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; ~~((and))~~

(b) Spring-powered device for lancet - one in a six-month period.

(c) Test strips and lancets for an insulin dependent diabetic - one hundred of each, per month; and

(d) Test strips and lancets for a noninsulin dependent diabetic - one hundred of each, per three-month period.

(3) Braces, belts and supportive devices:

- ~~(a) ((Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;~~
- ~~(b) Surgical stockings (below the knee, above the knee, thigh high, or full length) - two pair per six-month period;~~
- ~~(c) Graduated compression stockings for pregnancy support (pantyhose style) - two per twelve-month period;~~
- ~~(d)) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;~~
- ~~((e)) (b) Ankle, elbow, or wrist brace - two per twelve-month period;~~
- ~~((f)) (c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;~~
- ~~((g)) (d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.~~
- (4) Decubitus care products:
 - (a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;
 - (b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;
 - (c) Heel or elbow protectors - four per twelve-month period.
- (5) Ostomy supplies:
 - (a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.
 - (b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.
 - (c) Adhesive remover or solvent - three ounces per month.
 - (d) Adhesive remover wipes, fifty per box - one box per month.
 - (e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.
 - (f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.
 - (g) Continent plug for continent stoma - thirty per month.
 - (h) Continent device for continent stoma - one per month.
 - (i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.
 - (j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.
 - (k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.
 - (l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.
 - (m) Irrigation bag - two every six months.
 - (n) Irrigation cone and catheter, including brush - two every six months.
 - (o) Irrigation supply, sleeve - one per month.
 - (p) Ostomy belt (adjustable) for appliance - two every six months.
 - (q) Ostomy convex insert - ten per month.
 - (r) Ostomy ring - ten per month.

- (s) Stoma cap - thirty per month.
- (t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):
 - (i) Drainable pouches with plastic face plate attached; or
 - (ii) Drainable pouches with rubber face plate.
- (6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):
 - (a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)
 - (b) For a two-lead TENS unit - one kit per month.
 - (c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).
 - (d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).
- (7) Urological supplies - diapers and related supplies:
 - (a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:
 - (i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;
 - (ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;
 - (iii) The padding must provide uniform protection;
 - (iv) The product must be hypoallergenic;
 - (v) The product must meet the flammability requirements of both federal law and industry standards; and
 - (vi) All products are covered for client personal use only.
 - (b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:
 - (i) Be hourglass shaped with formed leg contours;
 - (ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;
 - (iii) Have leg gathers that consist of at least three strands of elasticized materials;
 - (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
 - (v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;
 - (vi) Have a topsheet that resists moisture returning to the skin;
 - (vii) Have an inner lining that is made of soft, absorbent material; and
 - (viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:
 - (A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's

use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) ~~(Three)~~ Two hundred per month for a child three to eighteen years of age; and

(ii) Two hundred ~~(forty)~~ per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred ~~(forty)~~ per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) ~~(Three)~~ Two hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred ~~(forty)~~ per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(f) ~~((Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month))~~ Non-sterile gloves - one hundred per box, two box per month.

(g) Sterile gloves - thirty pair, per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(12) Positioning devices:

(a) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(b) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

(13) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

(14) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

(15) Noninvasive bone growth/nerve stimulators:

- (a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.
- (b) Osteogenesis stimulators - one in a five-year period.
- (16) Communication devices - artificial larynx, any type - one in a five-year period.
- (17) Ambulatory aids:
 - (a) Canes - one in a five-year period.
 - (b) Crutches - one in a five-year period.
 - (c) Walkers - one in a five-year period.
 - ~~((18) Bathroom equipment:~~
 - ~~(a) Commode chairs - one in a five-year period.~~
 - ~~(b) Tub stool or bench - one in a five-year period.~~
 - ~~(c) Transfer bench for tub or toilet - one in a five-year period.~~
 - ~~(d) Bed pans - one in a five-year period.~~
 - ~~(e) Urinals - one in a five-year period.~~
 - ~~(f) Shower/commode chairs - one in a five-year period.~~
 - ~~(g) Bath seats/chairs - one in a five-year period.~~
 - ~~(h) Potty chairs - one in a five-year period.~~
 - ~~(19) Blood monitoring:~~
 - ~~(a) Sphygmomanometer/blood pressure apparatus - one in a five-year period.~~
 - ~~(b) Automatic blood pressure monitor - one in a five-year period.~~

AMENDATORY SECTION (Amending WSR 07-04-036, filed 1/29/07, effective 3/1/07)

WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered. (1) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS) ~~((, formerly known as HCFA,))~~ that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services under the provisions of WAC 388-501-0165.

(4) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the medicare programs for qualified medicare beneficiaries; or
- (d) Requested for a child who is eligible for services under the EPSDT program. The department reviews these requests according to the provisions of chapter 388-534 WAC.
- (6) Excluded services and equipment include, but are not limited to:
 - (a) Services, procedures, treatment, devices, drugs, or the application of associated services that the Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services are provided;
 - (b) Any service specifically excluded by statute;
 - (c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill (refer to the aging and disability services administration's (ADSA) COPEs program for potential coverage);
 - (d) Hairpieces or wigs;
 - (e) Material or services covered under manufacturers' warranties;
 - (f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;
 - (g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;
 - (h) Prosthetic devices dispensed solely for cosmetic reasons ~~((refer to WAC 388-531-0150 (1)(d)))~~;
 - (i) Home improvements and structural modifications, including but not limited to the following:
 - (i) Automatic door openers for the house or garage;
 - (ii) Saunas;
 - (iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;
 - (iv) Swimming pools;
 - (v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or
 - (vi) Electrical rewiring for any reason;
 - (vii) Elevator systems and elevators; and
 - (viii) Lifts or ramps for the home; or
 - (ix) Installation of bathtubs or shower stalls.
 - (j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:
 - (i) Back-packs, pouches, bags, baskets, or other carrying containers;
 - (ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);
 - (iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700 (13) for car seats;
 - (iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;
 - (v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;
 - (vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(A) Devices intended for amplifying voices (e.g., microphones);

(B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ADSA COPEs or outpatient hospital programs for emergency response systems and services);

(C) Two-way radios; and

(D) Rental of related equipment or services;

(vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(viii) Ergonomic equipment;

(ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;

(x) Generators;

(xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;

(xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

(xiv) Racing strollers/wheelchairs and purely recreational equipment;

(xv) Room fresheners/deodorizers;

(xvi) Bidet or hygiene systems, sharp containers, parafin bath units, and shampoo rings;

(xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).

(k) Blood monitoring:

(i) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;

(ii) Blood pressure cuff only; and

(iii) Automatic blood pressure monitor.

(l) Bathroom equipment:

(i) Bath stools;

(ii) Bathtub wall rail (grab bars);

(iii) Bed pans;

(iv) Control unit for electronic bowel irrigation/evacuation system;

(v) Disposable pack for use with electronic bowel system;

(vi) Potty chairs;

(vii) Raised toilet seat;

(viii) Safety equipment (e.g. belt, harness or vest);

(ix) Shower/commode chairs;

(x) Sitz type bath or equipment;

(xi) Standard and heavy duty bath chairs;

(xii) Toilet rail;

(xiii) Transfer bench tub or toilet;

(xiv) Urinal male/female.

(m) Disinfectant spray - one twelve-ounce bottle or can per six-month period.

(n) Personal and comfort items (~~that do not meet the DME definition~~), including but not limited to the following:

(i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers (~~and~~), sheets, and bumper pads;

(iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, (~~and~~) socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and graduated compression stockings for pregnancy support (pantyhose style);

(v) Clothing protectors, surgical masks, and other protective cloth furniture coverings;

(vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(vii) Diverter valves and handheld showers for bathtub;

(viii) Eating/feeding utensils;

(ix) Emesis basins, enema bags, and diaper wipes;

(x) Health club memberships;

(xi) Hot or cold temperature food and drink containers/holders;

(xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(xiii) Impotence devices;

(xiv) Insect repellants;

(xv) Massage equipment;

(xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;

(xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(xviii) Page turners;

(xix) Radio and television;

(xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and

(xxi) Toothettes and toothbrushes, waterpics, and peridental devices whether manual, battery-operated, or electric.

~~((H))~~ (o) Certain wheelchair features and options are not considered by the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:

(i) Attendant controls (remote control devices);

(ii) Canopies, including those for strollers and other equipment;

(iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);

(iv) Identification devices (such as labels, license plates, name plates);

- (v) Lighting systems;
- (vi) Speed conversion kits; and
- (vii) Tie-down restraints, except where medically necessary for client-owned vehicles.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-1600 Items and services which require prior authorization. (1) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) The department considers all of the following when establishing utilization criteria:

- (a) High cost;
 - (b) Potential for utilization abuse;
 - (c) Narrow therapeutic indication; and
 - (d) Safety.
- (2) The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:
- (a) Augmentative communication devices (ACDs);
 - (b) Certain by report (BR) DME and supplies as specified in the department's published issuances, including billing instructions and numbered memoranda;
 - (c) Blood glucose monitors requiring special features;
 - (d) Certain equipment rentals and certain prosthetic limbs, as specified in the department's published issuances, including billing instructions and numbered memoranda;
 - (e) Decubitus care products and supplies;
 - (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;
 - (g) Equipment parts and labor charges for repairs or modifications and related services;
 - (h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (j) Orthopedic shoes and selected orthotics;
 - (k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (l) Positioning car seats for children under five years of age;
 - (m) Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (n) Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;
 - (o) ~~((Wheelchair-style shower/commode chairs;~~
 - ~~((p)))~~ Other DME not specifically listed in the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and
 - ~~((q)))~~ (p) Limitation extensions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-543-2300 Bathroom/shower equipment.

WSR 09-23-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 5, 2009, 7:44 a.m., effective November 15, 2009]

Effective Date of Rule: November 15, 2009.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The agency finds that this action is required by the federal SNAP Administrative Notice 09-51 (RCW 34.05.380 (3)(a)). The effective date of this rule coincides with the effective date of WAC 388-450-0015 filed as WSR 09-16-095 which becomes effective November 15, 2009.

Purpose: The department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? This rule is necessary to exercise an option from the 2002 farm bill to treat child support payments made to someone outside of the home as an income exclusion prior to administering the gross income test.

This change will enhance the division of child support's mission to collect child support and will enhance community services division's mission to assist low-income families to access the Basic Food program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: P.L. 107 - 171 § 4101.

Adopted under notice filed as WSR 09-19-148 on September 23, 2009.

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

Number of Sections Adopted at 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 1, Repealed 0.

Date Adopted: November 4, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

| | |
|------------------------------------|----------------------------------|
| Eligible and ineligible AU members | Standard deduction |
| 1 | \$ ((144)) <u>141</u> |
| 2 | \$ ((144)) <u>141</u> |
| 3 | \$ ((144)) <u>141</u> |
| 4 | \$ ((147)) <u>153</u> |
| 5 | \$ ((172)) <u>179</u> |
| 6 or more | \$ ((197)) <u>205</u> |

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
- (b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) ~~((Legally obligated current or back child support paid to someone outside of your AU:~~

- ~~((a) For a person who is not in your AU; or~~
- ~~((b) For a person who is in your AU to cover a period of time when they were not living with you.~~

~~((6)) A portion of your shelter costs as described in WAC 388-450-0190.~~

Purpose: This rule-making order amends chapter 16-401 WAC by increasing nursery dealer license fees and requested inspection fees. In addition, the department is amending the language in order to meet the needs of the nursery industry and in response to recent changes implemented by the federal government. During the 2009 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture to increase the nursery dealer licensing and plant pest inspection and testing fees as necessary to meet the actual costs of conducting business (see chapter 564, Laws of 2009).

Citation of Existing Rules Affected by this Order: Amending WAC 16-401-027 and 16-401-041.

Statutory Authority for Adoption: RCW 15.13.260, 15.13.280, 15.13.370 and 15.14.015; chapter 34.05 RCW; and chapter 564, Laws of 2009.

Adopted under notice filed as WSR 09-19-140 on September 23, 2009.

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 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 0, Repealed 0.

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

Date Adopted: November 5, 2009.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 07-11-011, filed 5/3/07, effective 7/1/07)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

| | |
|---|---|
| (1) Fee or Charge: | |
| Hourly rate—business hours | \$ ((34.80)) <u>40.00</u> |
| Hourly rate—nonbusiness hours | \$ ((44.45)) <u>51.00</u> |
| Certificate issued at time of inspection | No charge |
| Certificate issued more than twenty-four hours after the inspection | \$ ((16.55)) <u>19.50</u> |
| Additional certificates | \$ ((5.20)) <u>6.50</u> |
| Fumigation lot or container fee | \$ ((13.80)) <u>16.00</u> |

WSR 09-23-005

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 5, 2009, 8:08 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

| | |
|--|-------------------------------------|
| (1) Fee or Charge: | |
| Certificate of plant health for noncommercial movement | \$6.80 |
| Compliance agreement | \$(34.80) 40.00 |
| Inspection tags or stickers (lots of 250) | \$(6.80) 7.80 per lot |
| ((Inspection tags or stickers (minimum 10) | \$0.29 each)) |

(2) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may also charge fees and/or surcharges for transmittal to federal agencies.

(7) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 07-11-011, filed 5/3/07, effective 7/1/07)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred

dollars ~~\$(38.73)~~ 42.00

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is ~~\$(82.99)~~ 91.00

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(166.00)~~ 182.00

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars ~~\$(82.99)~~ 91.00

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(166.00)~~ 182.00

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270 \$6.70

WSR 09-23-006

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 5, 2009, 8:10 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: This rule-making order amends chapter 16-470 WAC by increasing laboratory diagnostic and postentry site inspection fees, including hourly fees for these services. In addition, the department is amending the language in order to meet the needs of the affected stakeholders in response to recent changes in technology, procedures implemented by the federal government, and industry practices. During the 2009 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture to increase the plant pest inspection and testing fees as necessary to meet the actual costs of conducting business (see chapter 564, Laws of 2009).

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-912, 16-470-917, and 16-470-921.

Statutory Authority for Adoption: RCW 17.24.021 and 17.24.131; chapter 34.05 RCW; and chapter 564, Laws of 2009.

Adopted under notice filed as WSR 09-19-141 on September 23, 2009.

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 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 5, 2009.

Dan Newhouse Director

AMENDATORY SECTION (Amending WSR 07-11-012, filed 5/3/07, effective 7/1/07)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

| | |
|---------------------------------|------------------------------|
| Hourly rate - business hours | ((34.80)) \$40.00 |
| Hourly rate - nonbusiness hours | ((44.45)) \$51.00 |

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) ~~((Nematology))~~ Plant pathology laboratory diagnostic fees ~~((are as follows))~~:

| | | | | | |
|--|---------------------|----------------------|-----------------------|-----------------------|-------------------------|
| ((Identity Determination nematode | 1 sample | 5 samples | 10 samples | 50 samples | 100+ samples |
| | 36.15 ea | 33.30 ea | 30.55 ea | 29.80 ea | 27.75 ea)) |

- ~~((a) Nematode assay (plant material) \$38.00~~
- ~~((b) Nematode assay (soil) \$60.00~~
- ~~((c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut \$60.00~~

Note: ~~((To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific nematode, unless more than one nematode can be detected in a single test without additional inputs.))~~ Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 07-11-012, filed 5/3/07, effective 7/1/07)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services.

- (1) Post entry site inspection and/or permit review and approval ~~((69.85))~~ \$81.00
- (2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.
- (3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 03-10-082, filed 5/6/03, effective 6/30/03)

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees. (1) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a

regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established in chapter 16-401 WAC.

WSR 09-23-009 PERMANENT RULES GROWTH MANAGEMENT HEARINGS BOARDS

[Filed November 5, 2009, 10:22 a.m., effective December 6, 2009]

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

Purpose: The purpose of these amendments to the rules is to reflect the consolidation of the administrative functions of the three growth management hearings boards into a single office. Amendments are needed to provide accurate, clarifying information and facilitate efficiency of document filing based on this consolidation.

Citation of Existing Rules Affected by this Order: Amending WAC 242-02-052, 242-02-080, 242-02-140, 242-02-210, 242-02-230, 242-02-240, 242-02-250, 242-02-292, 242-02-320, 242-02-330, 242-02-340, 242-02-530, and 242-02-534.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 09-15-165 on July 21, 2009.

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 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 13, 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: October 28, 2009.

James McNamara
Chair, Rules Committee

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-24 issue of the Register.

WSR 09-23-022

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-15—Filed November 9, 2009, 8:16 a.m., effective December 10, 2009]

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

Purpose: In 2005, the legislature enacted HB 1034 authorizing the commissioner to place an insurer under administrative supervision under specified circumstances. These new rules establish the process for the administrative supervision of an insurer or carrier, requirements for the plan of correction an insurer or carrier must prepare and follow when it is subject to an administrative supervision order, and procedures for the administrative supervisor authorized under the commissioner's order.

Statutory Authority for Adoption: RCW 48.02.060, 48.31.435.

Other Authority: RCW 48.31.400, 48.31.900.

Adopted under notice filed as WSR 09-17-123 on August 19, 2009.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail KacyS@oic.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 6, Amended 0, Repealed 0.

Number of Sections Adopted at 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: November 9, 2009.

Mike Kreidler
Insurance Commissioner

ADMINISTRATIVE SUPERVISION OF INSURERS

NEW SECTION

WAC 284-16-600 Purpose. The purpose of this regulation, WAC 284-16-600 through 284-16-650, is to establish standards and procedures for the administrative supervision of insurers exceeding their powers or engaging in methods or practices that render the continuance of their business financially hazardous to their policyholders, creditors or the general public.

NEW SECTION

WAC 284-16-610 Definitions. The following definitions apply throughout this regulation unless the context clearly requires otherwise:

(1) The term "exceeded its powers" has the meaning set forth at RCW 48.31.020 (2)(a).

(2) The term "financially hazardous" means the standards set forth at WAC 284-16-310.

(3) "Insurer" has the meaning set forth at RCW 48.31.020(1) and 48.31.021.

(4) "Plan of correction" is an insurer's written plan to address or correct the commissioner's requirements to abate the findings and determination in the commissioner's order for administrative supervision.

NEW SECTION

WAC 284-16-620 Process for establishing administrative supervision of an insurer. (1) The commissioner may issue an order for administrative supervision and appoint an administrative supervisor if the commissioner makes a finding that:

(a) The insurer is in a condition which makes its continued operation financially hazardous to its policyholders, creditors or the general public; or

(b) The insurer has exceeded its powers.

(2) In making a determination in subsection (1) of this section, the commissioner will consider:

(a) The conditions in RCW 48.31.020 (2)(a) to determine whether an insurer has exceeded its powers; or

(b) The findings in RCW 48.31.400(1), standards in WAC 284-16-310, and authorized actions in WAC 284-16-320(1) to determine whether an insurer is in financially hazardous condition.

NEW SECTION

WAC 284-16-630 Plan of correction. (1) This plan of correction must include one or more of the actions under WAC 284-16-320(2), and may include one or more prohibitions contained in the order.

(2) The contents of a plan of correction must address the specific facts and circumstances that led to the order. The plan of correction must include all of the following elements necessary to fully address the list of requirements contained in the administrative supervision order:

(a) An executive summary identifying the objective goals of the plan with key implementation dates and a projected date for full statutory compliance;

(b) A background description of the insurer describing its history, ownership structure, relationships with affiliates, management structure, key employees, and overall operating structure of its organization;

(c) The financial condition of the insurer summarizing its major categories of assets and liabilities, revenues and expenses, and debt and capital structure based on actual annual results for the previous two calendar years and monthly financial forecasts and assumptions for the next three year period to include any specific business plans by function from the date of the commissioner's order;

(d) The causes of the financially hazardous condition or exceeding its powers situation giving rise to supervision proceedings;

(e) The proposed corrective actions specifically identifying operational changes, contractual changes, management changes, and internal control structure changes;

(f) A proposal for monitoring and reporting systems to provide periodic reviews of progress and comparisons of actual results with the plan of correction objectives;

(g) An agreement that the insurer will provide a copy of any notice, request, or other communication from any other regulatory authority that is received by the insurer under administrative supervision to the administrative supervisor or designee within five business days after receipt by the insurer; and

(h) Any other element necessary to fully address a requirement contained in the administrative supervision order.

NEW SECTION

WAC 284-16-640 Compliance with written requirements of commissioner—Noncompliance. (1) Within fifteen days after receipt of the commissioner's order, the insurer under administrative supervision must submit its plan of correction to address or correct the stated requirements in writing to the commissioner. The commissioner may extend the fifteen-day time period for submission of the plan of correction if the commissioner finds the insurer establishes good cause for the extension.

(2) If the commissioner and the insurer agree on the plan of correction, the commissioner will issue a written order to carry out the plan of correction. The insurer must not implement its plan of correction prior to receiving written approval by the commissioner.

(3) If the insurer fails to timely submit or the commissioner and the insurer are unable to agree to a plan of correction, the commissioner may enter an order requiring the insurer to take such corrective actions as may be reasonably necessary to remove the causes and conditions giving rise to the need for administrative supervision.

(4) Failure of the insurer to timely submit a plan of correction is a violation of the applicable provisions of Title 48 RCW.

(5) A copy of the commissioner's order approving the plan of correction or the order requiring the insurer to take

corrective actions will be provided to the insurer and to the administrative supervisor.

NEW SECTION

WAC 284-16-650 Administrative supervisor duties.

(1) To the extent possible and consistent with the list of requirements referenced in RCW 48.31.400 (2)(b), the administrative supervisor will allow the insurer to continue its existing operations.

(2) The administrative supervisor will establish appropriate disbursement limits consistent with good internal control principles to facilitate prompt payment of claims and payables.

(3) Unless the processing of claims is an issue identified in the list of requirements referenced in RCW 48.31.400 (2)(b), the administrative supervisor will allow claims to be processed in the ordinary course of business.

(4) The administrative supervisor will promptly acknowledge every insurer's request for approval of actions identified in the administrative supervision order or plan of correction that requires approval. To the extent feasible, the administrative supervisor will act on an insurer's requests within five business days after receipt.

WSR 09-23-040

PERMANENT RULES

HIGHER EDUCATION COORDINATING BOARD

[Filed November 9, 2009, 11:29 a.m., effective December 10, 2009]

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

Purpose: Removes the private contribution matching requirement; removes reference to the American Indian endowed scholarship trust fund; and requires that any future state fund appropriations be deposited into the American Indian scholarship endowment fund.

Citation of Existing Rules Affected by this Order: Amending WAC 250-76-020 and 250-76-050 through 250-76-070, American Indian endowed scholarship program.

Statutory Authority for Adoption: RCW 28B.108.060, 28B.108.020, 28B.108.050, and 28B.108.070.

Other Authority: Passage of SSB 5001, chapter 259, Laws of 2009, 61st legislature, 2009 regular session.

Adopted under notice filed as WSR 09-17-088 on August 17, 2009.

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 4, Repealed 0.

Number of Sections Adopted at 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 4, Repealed 0.

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

Date Adopted: November 9, 2009.

John Klacik
Director of
Student Financial Assistance

AMENDATORY SECTION (Amending WSR 93-19-025, filed 9/3/93, effective 10/4/93)

WAC 250-76-020 Program definitions. (1) "Institution of higher education" or "institution" shall mean any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof, or any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of the Northwest (~~(Association of Schools and)~~) Commission on Colleges and Universities, providing such institution agrees to participate in the program in accordance with all applicable rules and regulations. Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of the above named accrediting association.

(2) "Board" means the higher education coordinating board. When a duty or responsibility of the board is referenced in these regulations, the authority needed to discharge that responsibility lies with the executive director or his or her designee.

(3) "Eligible student" or "student" means an American Indian student who meets the eligibility criteria as defined in WAC 250-76-030(1).

(4) "Full-time undergraduate student" is defined as a student who is enrolled for twelve quarter credits or the equivalent.

(5) "Full-time graduate student" is defined as one who is enrolled in at least the minimum credit course load required by the institution for disbursing financial aid to full-time graduate students.

(6) "Private cash donation," "private donation," or "donation" means moneys from nonstate sources that include, but are not limited to, federal moneys, tribal moneys, and assessments by commodity commissions authorized to conduct research activities, including but not limited to, research studies authorized under RCW 15.66.030 and 15.65.040.

(7) "Conditional gift" means a private cash donation received as a gift and subject to conditions by the contributor.

AMENDATORY SECTION (Amending WSR 92-04-018, filed 1/27/92, effective 2/27/92)

WAC 250-76-050 Terms of award. (1) Scholarship amounts.

(a) The amount of the scholarship for an undergraduate student shall be determined by the higher education coordi-

nating board in consultation with the advisory committee, not to exceed the student's demonstrated financial need.

(b) The amount of the scholarship for a graduate student shall be determined by the higher education coordinating board in consultation with the advisory committee, not to exceed:

(i) The student's demonstrated financial need, or

(ii) The stipend of a teaching assistant, including tuition, at the University of Washington, whichever is higher.

(c) In calculating a student's need, the board shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care.

(d) The maximum yearly scholarship for any student may not exceed the maximum possible scholarship received for a student attending the University of Washington.

(e) Monetary awards made from this endowment may not replace any other state or federal student financial aid grant which would otherwise be made available to the student. If the recipient of this award is also a recipient of other student aid, it is the intent of this program that the institution presume that the endowment award be used to fill an unmet financial need or replace loans.

(2) Term of scholarship award.

~~((#))~~ A student is eligible to receive a scholarship for a maximum of five years. In order to receive the scholarship award beyond the first year, the student must continue to meet eligibility and selection criteria as defined in WAC 250-76-020 (3)(4)(5), 250-76-030, and 250-76-040(3) of these rules. The following additional criteria may be employed by the board in determining renewal of a student's scholarship award:

~~((#))~~ Amount of earnings by ~~((the American Indian endowed scholarship trust fund and))~~ the American Indian scholarship endowment fund as ~~((administered))~~ managed by the state ~~((treasurer))~~ investment board.

(3) Number of scholarships awarded. The maximum number of scholarships awarded or renewed each year shall be limited by the amount of earnings received by the board from ~~((the American Indian endowed scholarship trust fund and))~~ the American Indian scholarship endowment fund as ~~((administered))~~ managed by the state ~~((treasurer))~~ investment board. Consideration for funding shall be given to those students eligible to renew their scholarship award.

AMENDATORY SECTION (Amending WSR 92-04-018, filed 1/27/92, effective 2/27/92)

WAC 250-76-060 Administration. (1) Administering agency. The higher education coordinating board shall administer the American Indian endowed scholarship program. The board shall have the following administrative responsibilities:

(a) Publicize the program;

(b) Adopt necessary program guidelines;

(c) Accept and deposit donations into the endowment fund;

(d) Request from the state investment board, and accept from the state treasurer, moneys earned by ~~((the trust fund~~

and)) the endowment fund for the disbursement of American Indian endowed scholarship awards;

(e) Solicit and accept grants and donations from public and private sources for the program;

(f) Name scholarships in honor of those American Indians from Washington who have acted as role models; and

(g) Select students to receive American Indian endowed scholarship awards, with the assistance of the selection committee created by WAC 250-76-040(2).

(2) Responsibility for soliciting contributions. The American Indian community will have primary responsibility for solicitation of contributions. The higher education coordinating board will work in support of individual tribes and organizations who are soliciting contributions.

AMENDATORY SECTION (Amending WSR 93-19-025, filed 9/3/93, effective 10/4/93)

WAC 250-76-070 Management of funds. (1) ~~((American Indian endowed scholarship trust fund. Funds appropriated by the legislature for the American Indian endowed scholarship trust fund shall be deposited into the fund and invested by the state treasurer.~~

~~(a) As the higher education coordinating board can match \$50,000 of state funds with an equal amount of private cash donations, the board may request that the state treasurer deposit \$50,000 of state matching funds and any earned interest from the trust fund into the American Indian scholarship endowment fund.~~

~~((2)) American Indian scholarship endowment fund. The American Indian scholarship endowment fund shall be ((administered by)) in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board. Funds appropriated by the legislature for the American Indian endowed scholarship program shall be deposited into the endowment fund. Moneys received from the higher education coordinating board, private donations, ~~((state matching moneys,))~~ and funds received from any other source may be deposited into the endowment fund. ~~((All moneys deposited in the endowment fund shall be invested by the state treasurer.))~~~~

(a) With the exception of conditional gifts, donated moneys may not be refunded, or otherwise returned, to the contributor after they have been deposited to the endowment fund.

Conditional gift moneys may be refunded, or otherwise returned, according to the terms of the conditional gift if the condition attached to the gift has failed. Moneys returned in this manner shall not constitute an invasion of corpus.

(b) A donation may not be accepted if such acceptance conditions the awarding of scholarships in a manner contrary to chapter 28B.108 RCW, or contrary to the guidance of the program's advisory committee.

~~((3))~~ (2) Scholarships shall be disbursed from the investment earnings of ~~((the trust fund and))~~ the endowment fund, with the exception of the portion of earnings reinvested in the fund according to the terms of a conditional gift. The principal of the ~~((trust and))~~ endowment fund~~((s))~~ shall not be invaded. No scholarships shall be awarded until sufficient

earnings from the ~~((combined trust and))~~ endowment fund~~((s))~~ have accumulated.

~~((4))~~ (3) As sufficient earnings from the ~~((combined trust and))~~ endowment fund~~((s))~~ have accumulated, the higher education coordinating board may request that the state investment board, through the state treasurer, release earnings from the endowment fund to the board for scholarships.

~~((5))~~ (4) The higher education coordinating board may award scholarships to eligible students from the moneys earned by ~~((the American Indian endowed trust fund and))~~ the American Indian scholarship endowment fund ~~((as administered by the state treasurer))~~, or from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program.

WSR 09-23-044

PERMANENT RULES COUNTY ROAD

ADMINISTRATION BOARD

[Filed November 9, 2009, 1:58 p.m., effective December 10, 2009]

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

Purpose: ESSB 5228 adopted by the state legislature during the 2009 legislative session will become effective July 26, 2009.

The term "day labor" is removed from the language and replaced with "county forces" as adopted by the state legislature and signed into law.

For the purpose of calculating the amount of road construction that a county may do using county forces, counties are separated into four groups based on population and provided with a formula to determine the maximum amount (Note: These dollar amounts change in 2012 as stated in RCW 36.77.065):

- Counties with less than 30,000 people may have no more than \$700,000, plus \$700,000 multiplied by the previous year's motor vehicle fuel tax distribution factor in construction programs completed by county forces.
- Counties with between 30,000 and 150,000 people may have no more than \$1.15 million, plus \$1.15 million multiplied by the previous year's motor vehicle fuel tax distribution factor in construction programs completed by county forces.

Citation of Existing Rules Affected by this Order: Amending WAC 136-12-060, 136-165-020, 136-167-040, 136-170-040, 136-170-050, 136-170-060, and chapters 136-16 and 136-18 WAC.

Statutory Authority for Adoption: Chapter 36.78 RCW. Adopted under notice filed as WSR 09-18-050 on August 27, 2009.

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 19, Repealed 0.

Number of Sections Adopted at 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; Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 29, 2009.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-018, filed 8/22/02, effective 9/22/02)

WAC 136-12-060 Failure to comply. If notification is not received within the time frame established in WAC 136-12-045, the matter of the vacancy will be considered at the next regular meeting of the county road administration board. The county road administration board may require that all ~~((day labor))~~ construction by county forces projects be shut down and/or that all distribution of gas tax funds to the county cease: Provided however, That it may continue to grant reasonable extensions in the event the affected county can give adequate proof or demonstrate at the next regularly scheduled board meeting that a diligent effort has been made to secure the services of a qualified engineer.

Chapter 136-16 WAC

STANDARDS OF GOOD PRACTICE—ANNUAL ROAD PROGRAM, CONSTRUCTION REPORT, AND ~~((DAY LABOR))~~ CONSTRUCTION BY COUNTY FORCES LIMITS

AMENDATORY SECTION (Amending WSR 96-17-013, filed 8/12/96, effective 9/12/96)

WAC 136-16-020 Contents of annual program. The adopted annual program shall include, but not be limited to:

(1) A line item for estimated preliminary engineering costs;

(2) A line item for estimated right of way acquisition costs; and

(3) A listing of all proposed construction projects for the year including a brief description of the work, the name, number and functional classification of the road, an estimate of the total cost of each project, including construction engineering but excluding preliminary engineering and right of way acquisition, and a notation as to whether construction work on each project is to be done by contract or ~~((day labor))~~ construction by county forces or both.

When a project involves both contract and ~~((day labor))~~ construction by county forces work the estimate shall be divided to show the estimated cost of each type of work. The sum of all construction costs shall be approximately equal to the amount included in the road fund construction budget for

construction work. All construction projects shall be shown, regardless of funding source, including all projects previously authorized and under way on which expenditures are anticipated during the program year. Projects previously authorized on which construction work is contemplated within the program year shall also be listed showing the estimated costs of work during the program year. In all cases, the total amount of proposed ~~((day labor))~~ construction by county forces costs ~~((, including construction administration and engineering,))~~ shall not exceed the ~~((day labor))~~ construction by county forces limit as computed in WAC 136-16-022.

AMENDATORY SECTION (Amending WSR 01-24-074, filed 12/3/01, effective 1/3/02)

WAC 136-16-022 ~~((Day labor))~~ Construction by county forces limit. The statutory ~~((day labor))~~ construction by county forces limit shall be computed in accordance with RCW 36.77.065 ~~((in the following manner for counties with populations equal to or exceeding 50,000:~~

~~(1) When the total annual county road construction budget is four million dollars or more, the day labor limit is eight hundred thousand dollars or fifteen percent of the total annual county road construction budget, whichever is greater.~~

~~(2) When the total annual county road construction budget is one million five hundred thousand dollars or more and less than four million dollars, the day labor limit is five hundred twenty five thousand dollars or twenty percent of the total annual county road construction budget, whichever is greater.~~

~~(3) When the total annual county road construction budget is five hundred thousand dollars or more and less than one million five hundred thousand dollars, the day labor limit is two hundred and fifty thousand dollars or thirty five percent of the total annual county road construction budget, whichever is greater.~~

~~(4) When the total annual county road construction budget is less than five hundred thousand dollars, the day labor limit shall be two hundred and fifty thousand dollars, unless the county legislative authority, by resolution, elects the alternate procedure set forth in RCW 36.77.065. When such alternate procedure is chosen, an individual project limit of thirty five thousand dollars shall apply, and each project shall be administered in accordance with chapter 136-18 WAC.~~

~~(5) The statutory day labor limit shall be computed in accordance with RCW 36.77.065 in the following manner for counties with populations less than 50,000:~~

~~(a) When the total annual county road construction budget is four million dollars or more, the day labor limit is eight hundred eighty thousand dollars or twenty five percent of the total annual county road construction budget, whichever is greater.~~

~~(b) When the total annual county road construction budget is one million five hundred thousand dollars or more and less than four million dollars, the day labor limit is five hundred seventy seven thousand dollars or thirty percent of the total annual county road construction budget, whichever is greater.~~

~~(c) When the total annual county road construction budget is five hundred thousand dollars or more and less than one million five hundred thousand dollars, the day labor limit is two hundred seventy five thousand dollars or forty five percent of the total annual county road construction budget, whichever is greater.~~

~~(d) When the total annual county road construction budget is less than five hundred thousand dollars, the day labor limit shall be two hundred seventy five thousand dollars, unless the county legislative authority, by resolution, elects the alternate procedure set forth in RCW 36.77.065. When such alternate procedure is chosen, an individual project limit of thirty eight thousand five hundred dollars shall apply, and each project shall be administered in accordance with chapter 136-18 WAC. The county population used in the computation shall be the official office of financial management estimate as of April 1st of the previous calendar year.~~

Determination by the county road administration board that a violation of RCW 36.77.065 has occurred shall be cause for issuance of a conditional certificate of good practice by the board as specified in WAC 136-04-060 on behalf of the county in which the violation occurred. The first condition of such a conditional certificate of good practice shall be that the county be required, at the next regular or special meeting of the county road administration board, to show cause why a certificate of good practice should not be denied to that county.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-16-050 Annual construction report. At any time prior to April 1st of the year following the annual program year, the county engineer shall submit an annual construction report to the county road administration board in accordance with forms and instructions provided by the county road administration board. The construction report shall show actual expenditures for all construction work including construction administration and engineering done during the previous budget year. Upon receipt of each county's annual construction report, the ~~((day labor))~~ construction by county forces limit as described in ~~((WAC 136-16-022))~~ RCW 36.77.065 will again be ~~((calculated based upon))~~ compared with the actual accomplishments as set forth in the annual construction report. A county which exceeds the ~~((day labor))~~ construction by county forces limit ~~((as computed))~~ as part of the annual program or ~~((as computed))~~ as part of the annual construction report shall be in violation of this standard of good practice.

Chapter 136-18 WAC

STANDARDS OF GOOD PRACTICE—~~((DAY LABOR))~~ CONSTRUCTION BY COUNTY FORCES

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-010 Purpose and authority. Chapter 36.77 RCW provides for the construction and improvement

of county roads by contract, by ~~((day labor))~~ construction by county forces or by a combination of ~~((day labor))~~ construction by county forces and contract. The purpose of this standard of good practice is to assure that all ~~((day labor))~~ construction by county forces construction work is accomplished within statutory limitations.

AMENDATORY SECTION (Amending WSR 01-24-074, filed 12/3/01, effective 1/3/02)

WAC 136-18-020 Definitions. For purposes of implementing statutory requirements relative to ~~((day labor))~~ construction ((work)) by county forces, the following definitions shall apply:

(1) Construction - the building of a new road facility or improvement of an existing facility to a higher geometric or structural standard.

(2) ~~((Day labor))~~ Construction by county forces - construction work performed by personnel carried on the county payroll using county owned, leased or rented equipment.

(3) Authorization date - the date that construction is authorized.

(4) Start of construction - the date that construction work commences.

(5) End of construction - the date that construction work is completed.

(6) Completion date - the date on which a county road project is closed in the accounting records.

(7) Estimated construction costs - the county engineer's estimate of the cost of contemplated construction work, not including preliminary engineering and right of way acquisition costs.

(8) Estimated project costs - the county engineer's estimate of the cost of engineering, right of way acquisition, and construction.

(9) True and complete construction costs - the accounting record of all construction costs attributed to a county road project from the authorization date to the completion date.

(10) True and complete project costs - the accounting record of all engineering, right of way acquisition, and construction costs attributed to a county road project from the authorization date to the completion date.

(11) ~~((Day labor))~~ Construction by county forces road project - ~~((day labor))~~ construction by county forces authorized by action of the county legislative authority in those counties where a cumulative dollar limit applies to all ~~((day labor))~~ construction by county forces.

~~((12) Special day labor county road project - day labor construction which will result in a facility with independent utility, authorized by action of the county legislative authority in those counties:~~

~~((a) With populations equal to or exceeding 50,000 and where the total construction budget is less than five hundred thousand dollars and the legislative authority has by resolution elected to perform day labor construction in an amount not to exceed thirty five thousand dollars including labor, equipment and materials on any one project.~~

~~((b) With populations less than 50,000 and where the total construction budget is less than five hundred thousand dollars and the legislative authority has by resolution elected to per-~~

form day labor construction in an amount not to exceed thirty-eight thousand five hundred dollars including labor, equipment and materials on any one project.)

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-030 Authorization of ~~((day labor))~~ construction by county forces projects. Every proposed ~~((day labor))~~ construction by county forces road project ~~((and special day labor county road project))~~ shall be a part of the county's annual construction program as defined in RCW 36.81.130 and WAC 136-16-020. Additions to the program, and/or substitutions in the program, may be made by unanimous action of the county legislative authority at any time as provided in RCW 36.81.130. No construction work shall be done on any project until it has been authorized by resolution of said authority. The resolution shall include:

- (1) A brief description of the project;
- (2) A vicinity map showing the location of the project and its limits, provided that in lieu of individual vicinity maps, a single vicinity map showing the location of all projects may be included with the resolution adopting the annual program;
- (3) Identification of the project in terms of the officially adopted annual program;
- (4) The county engineer's estimate of construction costs prepared pursuant to the completion of such preliminary engineering; and
- (5) Construction plans as shall be necessary and sufficient.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-035 Special ~~((day labor))~~ construction by county forces limit for electrical and traffic control projects. Projects that consist of electrical and traffic control work are subject to the specific ~~((day labor))~~ construction by county forces limits as set forth in RCW 36.77.065.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-060 ~~((Day labor))~~ Construction by county forces project records. All ~~((day labor and special day labor))~~ construction by county forces project cost records shall be kept in the manner prescribed by the BARS manual. Records of quantities shall be kept in a manner consistent with original project estimates. The project records shall contain, but shall not be limited to, the following:

- (1) Dated authorizing resolution;
- (2) Vicinity map showing project location and limits;
- (3) County engineer's estimate;
- (4) Affidavit of preconstruction publication required by RCW 36.77.070;
- (5) Documentation of start and end of construction dates;
- (6) Affidavit of post-construction publication showing true and complete project cost as required by RCW 36.77-070.

AMENDATORY SECTION (Amending Order 59, filed 5/17/85)

WAC 136-18-064 Preconstruction publication requirements. The preconstruction publication required by RCW 36.77.070 may be made at any time subsequent to the adoption of the annual road construction program by the county legislative authority, but no later than the commencement of ~~((day labor))~~ construction by county forces on the project or projects. The publication shall include a brief description of each project and the county engineer's estimate of each project cost showing right of way acquisition, preliminary engineering, contract work (if any) and work by ~~((day labor))~~ construction by county forces.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-070 Special ~~((day labor))~~ reporting construction by county forces project ~~((reporting))~~ to the county road administration board. Each county engineer shall submit to the county road administration board a copy of each resolution authorizing a special ~~((day labor))~~ reporting construction by county forces road project whose estimated construction cost exceeds seventy-five percent of the ~~((day labor))~~ construction by county forces limit. Upon completion of each of these projects, or no later than March 1st of the succeeding year, the county engineer shall furnish to the county road administration board a copy of the record of true and complete construction costs. On any project where true and complete construction costs have exceeded the statutory ~~((day labor))~~ construction by county forces limit, the county engineer shall also provide to the county road administration board an explanation of the circumstances resulting in such over-expenditure.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-080 Review of ~~((day labor))~~ construction by county forces compliance by the county road administration board. The executive director of the county road administration board shall have authority to investigate cases of apparent violations of ~~((day labor))~~ construction by county forces limits and ~~((, for special day labor projects,))~~ prepare a listing of all such projects for which actual expenditures have exceeded the statutory ~~((day labor))~~ construction by county forces limit during the previous calendar year for review by the county road administration board at its second regular meeting of each calendar year.

AMENDATORY SECTION (Amending WSR 02-18-019, filed 8/22/02, effective 9/22/02)

WAC 136-18-085 Determination of ~~((day labor))~~ construction by county forces compliance by the county road administration board. At its second regular meeting of each calendar year, the county road administration board shall determine if any county has unreasonably exceeded its statutory ~~((day labor))~~ construction by county forces limit for the preceding calendar year, as indicated in RCW 36.77.065.

In determining what is unreasonable, the county road administration board shall consider the following:

(1) Did the county provide prior notification of the possible (~~day-labor~~) construction by county forces limit violation in writing to the county road administration board?

(2) What is the amount of the excess (~~day-labor~~) construction by county forces expenditure compared to the total annual county road construction expenditure for the same time period?

(3) Are there extenuating circumstances beyond the control of the county that resulted in exceeding the statutory (~~day-labor~~) construction by county forces limit?

(4) What is the past record of the county regarding (~~day-labor~~) construction by county forces compliance?

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-18-090 Action on (~~day-labor~~) construction by county forces compliance by the county road administration board. Determination by the county road administration board that a violation of RCW 36.77.065 has occurred shall be cause for issuance of a conditional certificate of good practice by the board as specified in WAC 136-04-060 on behalf of the county in which the violation occurred. The first condition of such a conditional certificate of good practice shall be that the county be required, at the next regular or special meeting of the county road administration board, to show cause why a certificate of good practice should not be denied to that county.

AMENDATORY SECTION (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

WAC 136-165-020 Requirements for consideration of RATA fund increases. (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) In extraordinary circumstances, a county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation only twice in the course of a project's development: At the completion of preliminary engineering, and prior to commencing construction. A project shall be considered to have commenced construction if:

(a) The construction contract for the work has been awarded; and

(b) If done by (~~day-labor~~) county forces, the work has commenced, except for labor construction engineering.

All cost increases during the course of construction shall be the responsibility of the county. Requests for increases in excess of fifty percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits.

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by (~~day-labor~~) county forces, the county has (~~supplied~~) supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which a county is expected to consider includes, but is not limited to, the following:

(a) The availability at the needed time of matching funds and other supplementary funds;

(b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;

(c) Required permits, including pre-project scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;

(d) Required right of way or other easements, and the time and cost of acquisition;

(e) Availability of qualified contractors to perform the work;

(f) Ownership, type, amount, and time requirements of any required utility relocation;

(g) Historical and projected labor, equipment and material costs; and

(h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

(a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;

(b) Project permit requirements were substantially changed, or new permits were required;

(c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;

(d) Design or other standards applicable to the project were changed; and/or

(e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the failure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds.

AMENDATORY SECTION (Amending WSR 01-09-077, filed 4/17/01, effective 5/18/01)

WAC 136-167-040 Lapsing of RATA allocation for approved projects. To encourage timely development and construction of approved projects, all projects for which RATA funds have been allocated must meet certain project development milestones. Failure to meet the milestones will result in action by the county road administration board to withdraw RATA funds from the project. This provision will only apply to those projects for which RATA funds have been allocated after July 1, 1995.

(1) For the purposes of this section, a project will be subject to lapsing and withdrawal of its RATA allocation if:

(a) The project has not begun the preliminary engineering phase within four years of project approval by the county road administration board; or

(b) The project has not begun construction within six years of the date of project approval by the county road administration board.

(2) A project shall be considered in preliminary engineering if authorization to expend funds for preliminary engineering has been granted by the county legislative authority as provided for in RCW 36.75.050. A project shall be considered in construction if:

(a) The construction contract for the work has been advertised for bids as provided for in RCW 36.77.020;

(b) A contract has been awarded under the provisions of the small works roster contract award process; or

(c) If done by ~~((day labor))~~ county forces, the work has commenced.

(3) If an approved project does not meet a required project development milestone, the county road administration board will, at its next regular meeting, withdraw RATA funds from the project.

(4) At any time up to ten days before such meeting, the county may, in writing, request an extension of the lapse date. The county road administration board executive director may grant such an extension if the director finds that the delay in project development was for reasons that were both unanticipated and beyond the control of the county, and subject to the following:

(a) A project extension will be granted one time only and will be no more than two years in length; and

(b) The request for an extension is based on unforeseeable circumstances that the county could not have anticipated at the time the project was submitted for RATA funding; and

(c) An approved time extension will not be grounds for the county to request an increase in the RATA funding of the project; and

(d) The executive director will determine a new lapse date, and all of the requirements listed above under subsections (1) and (2) of this section will apply except that further extensions will not be granted.

(5) The CRABoard may at any time place a moratorium on lapsing of projects that are delayed due to CRAB initiated rescheduling and establish a new lapsing date to fit the CRABoard's programming needs. For those projects given a lapsing moratorium, section four shall be held in abeyance until the new lapsing date.

AMENDATORY SECTION (Amending WSR 08-16-044, filed 7/29/08, effective 8/29/08)

WAC 136-170-040 Combining of CRAB/county contracts. In those cases when a county desires to combine two or more adjacent RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by ~~((day labor))~~ county forces, must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the county road administration board, regardless of the applicable maximum project RATA contribution.

Upon receipt of a letter of request to combine, and consideration and approval by the director of the county road administration board, a revised CRAB/county contract will be prepared and sent to the county for its execution and returned in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

AMENDATORY SECTION (Amending WSR 08-16-044, filed 7/29/08, effective 8/29/08)

WAC 136-170-050 Combining of RATA funded project with non-RATA funded project. In those cases when a county desires to combine a RATA funded project with one or more non-RATA funded projects, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by ~~((day labor))~~ county forces, shall notify the county road administration board in writing of its plans to combine the projects into a single construction project, assuring in writing that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans.

Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director will respond in writing, to grant the combination.

AMENDATORY SECTION (Amending WSR 08-16-044, filed 7/29/08, effective 8/29/08)

WAC 136-170-060 Splitting or phasing of CRAB/county contracts. (1) A county may split a single rural arterial trust account funded project into multiple adjacent phased construction projects only upon written request and approval by the county road administration board.

(2) The county must submit the request prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor.

(3) Upon receipt of the county's written request to split a RAP project, the CRAB director will consider and may approve the split.

(4) Upon such approval, a revised CRAB/county contract will be prepared, and sent to the county for its execution and returned in the same manner as for the original contract. The final contract must be fully executed prior to advertisement for contract construction, or if done by ~~((day labor))~~ county forces, prior to commencing construction.

(5) Funding for split projects will be assigned based upon the breakdown of costs specified in the county's request letter.

(6) Failure of a county to execute an amended CRAB/county contract within forty-five days of receipt shall nullify any split requests and any other county road administration board actions associated with the split request.

(7) Construction on at least one of the split projects must commence by the lapsing date of the original project and all remaining portions must proceed to construction within two years of commencement of the first project. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all portions or phases of the projects will be required unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(8) Split projects will be considered ineligible for any increases in RATA funding or revisions in scope.

WSR 09-23-045
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed November 9, 2009, 1:59 p.m., effective December 10, 2009]

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

Purpose: Amending and adding new sections to current chapter 136-28 WAC, Standards of good practice—Cooperative procedures for processing of county road accident reports.

Citation of Existing Rules Affected by this Order: Amending chapter 136-28 WAC.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 09-18-049 on August 27, 2009.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, 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: October 29, 2009.

Jay P. Weber
Executive Director

Chapter 136-28 WAC

STANDARDS OF GOOD PRACTICE—COOPERATIVE PROCEDURES FOR PROCESSING OF COUNTY ROAD ACCIDENT REPORTS

AMENDATORY SECTION (Amending WSR 05-11-037, filed 5/11/05, effective 6/11/05)

WAC 136-28-010 Purpose and authority. RCW 36.78.070(1) authorizes the county road administration board to establish standards of good practice for the administration of county roads and the efficient movement of people and goods over county roads. In order to maintain accurate information on the types and locations of collisions on county roads and implement the requirement of the National Highway Safety Act of 1966 that requires all states, in cooperation with their various local governments, to collect, compile and make reports to the National Highway Traffic Safety Administration in each state, the county road administration board has acted to coordinate the activities of the county engineers and the Washington state department of transportation. Each county engineer is to cooperate in this effort by following the procedure outlined below.

AMENDATORY SECTION (Amending WSR 05-11-037, filed 5/11/05, effective 6/11/05)

WAC 136-28-020 County Location Coding Form (CLCF) reporting procedure. The Washington state department of transportation (WSDOT) collects collision reports from all law enforcement agencies and receives collision reports from individual drivers. Periodically, the WSDOT ~~((will send or deliver to the county engineer's office in each county reports with attached county location coding forms (CLCF), concerning collisions occurring on county roads in that county))~~ makes CLCF reports available electronically.

The engineer will analyze ~~((the))~~ each report and complete the CLCF. For those collisions that the county engineer verifies did occur in his/her jurisdiction, ~~((only))~~ the completed CLCF will be returned electronically to the WSDOT. However, if the engineer determines that the collision did not occur on a roadway in the county's jurisdiction, he/she shall

~~((complete the bottom portion of))~~ enter that notation on the CLCF and return it ~~((and the collision report to))~~ electronically to the WSDOT.

AMENDATORY SECTION (Amending WSR 05-11-037, filed 5/11/05, effective 6/11/05)

WAC 136-28-030 Coding detail. (1) The county number shall be that particular number assigned to each county by the state office of financial management for county identification purposes.

(2) The county road log number shall be that particular five-digit number, including both leading and trailing zeros if applicable, assigned to each county road according to the county's latest county road log. No local names or numbers or other nomenclature shall be used in coding the road log number.

(3) The milepost shall be determined as accurately as practicable from a comparison of information on the collision report with the latest county road log.

(4) Collisions at an intersection with a state highway will be coded by the state department of transportation.

(5) To ensure uniformity, collisions at the intersection of any two county roads shall be coded to a road in the following priority order:

- (a) The road with the higher functional class;
- (b) The road that is the through route;
- (c) The road with the lower road number.

(6) Collisions on roads and/or at intersections with dual city-county or county-county responsibilities shall be coded in general accordance with the procedures outlined herein based on a mutual understanding between the several jurisdictions involved.

NEW SECTION

WAC 136-28-040 Action on accident reporting compliance by the county road administration board. By December 31, 2010, at least ninety percent of the CLCFs made available to the county engineer prior to January 1, 2010, shall be completed and transmitted to WSDOT.

Beginning January 1, 2010, the county engineer shall complete and return to WSDOT at least ninety percent of all CLCFs for the current calendar year by December 31st of that year. The county road administration board will advise each county engineer of the status of the CLCF actions as of September 30th and December 31st of each year. Failure to comply may be cause for issuance of a conditional certificate of good practice by the board as specified in WAC 136-04-060 on behalf of the county in which the violation occurred. The first condition of such a conditional certificate of good practice shall be that the county be required, at the next regular or special meeting of the county road administration board, to show cause why a certificate of good practice should not be denied to that county.

NEW SECTION

WAC 136-28-050 Determination of accident reporting compliance by the county road administration board. At its second regular meeting of each calendar year, the

county road administration board shall determine if any county is unreasonably delinquent in its statutory accident reporting for the preceding calendar year. In determining what is unreasonable, the county road administration board shall consider the following:

(1) Did the county provide prior notification of the possible accident reporting problems in writing to the county road administration board?

(2) How much greater than ten percent is the percentage of the delinquent accident reporting compared to the total county accident reporting for the same period?

(3) Are there extenuating circumstances beyond the control of the county that resulted in the delinquent accident reporting?

(4) What is the past record of the county regarding accident-reporting compliance?

WSR 09-23-055

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed November 12, 2009, 10:45 a.m., effective December 15, 2009]

Effective Date of Rule: December 15, 2009.

Purpose: The proposed rule amendment corrects the reemployment definition found in WAC 357-19-455 to match the definition found in WAC 357-01-280.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-455.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-20-103 on October 7, 2009.

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 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 1, Repealed 0.

Date Adopted: November 12, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-455 What is reemployment? Reemployment is the appointment of a former permanent employee who had permanent status in a class with the same or similar job duties.

WSR 09-23-056
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed November 12, 2009, 10:48 a.m., effective December 15, 2009]

Effective Date of Rule: December 15, 2009.

Purpose: The definitions of "reassignment" found in WAC 357-01-275 and 357-19-165 does not coincide with WAC 357-19-170. WAC 357-19-170 is the rule which grants the authority for an employer to reassign an employee. WAC 357-19-170 says an appointing authority may reassign an employee to a different position *within the same class* (no mention of a different class with the same salary range maximum). The proposed rule amendments to WAC 357-01-275 and 357-19-165 will correct this.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-275 and 357-19-165.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-20-104 on October 7, 2009.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 12, 2009.

Eva N. Santos
 Director

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-275 Reassignment. An employer-initiated move of an employee within the employer from one position to another position in the same class (~~(or a different class with the same salary range maximum)~~).

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-165 What is the difference between reassignment and transfer? A reassignment is an employer-initiated move of an employee from one position to a comparable position in the same class (~~(or a different class with the same salary range maximum)~~). A transfer is an employee-initiated move from one position within or between employers in the same class or a different class with the same salary range maximum.

WSR 09-23-057
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed November 12, 2009, 10:50 a.m., effective December 15, 2009]

Effective Date of Rule: December 15, 2009.

Purpose: It has been brought to our attention that the proposed deleted language is being interpreted to mean employees *must* use excess vacation accrual (EVA) before using justified excess vacation (JEV). EVA is the unprotected vacation leave above two hundred forty hours that is earned between anniversary dates. JEV is the vacation leave that is protected by a statement of necessity. Deletion of this language will help clarify that EVA does not have to be used first.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-215.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-20-105 on October 7, 2009.

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 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 1, Repealed 0.

Date Adopted: November 12, 2009.

Eva N. Santos
 Director

AMENDATORY SECTION (Amending WSR 09-11-065, filed 5/14/09, effective 6/16/09)

WAC 357-31-215 When may vacation leave be accumulated above the maximum ((240)) two hundred forty hours? There are two circumstances in which vacation leave may be accumulated above the maximum of ((30)) thirty working days ((240)) two hundred forty hours).

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (((240)) two hundred forty hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of ((240)) two hundred forty hours as follows:

(a) An employee may accumulate the vacation leave days between the time ((30)) thirty days is accrued and his/her next anniversary date of state employment.

(b) Leave accumulated above ~~((240))~~ two hundred forty hours must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) ~~((above))~~ of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of ~~((240))~~ two hundred forty hours as of the date of the statement of necessity cannot be deferred regardless of circumstances. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

~~((14))~~ • On June 15th, the employee's vacation leave balance is ~~((260))~~ two hundred sixty hours.

~~((14))~~ • The employee accrues ~~((10))~~ ten hours monthly.

~~((14))~~ • The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The ~~((20))~~ twenty hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity. ~~((These hours will not be deferred and will be lost unless they are used before October 16th of the current year.))~~

WSR 09-23-059

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed November 12, 2009, 2:57 p.m., effective December 15, 2009]

Effective Date of Rule: December 15, 2009.

Purpose: Currently WAC 357-46-058(2) states that an employee (general government and higher education) who is laid off is not considered to have had a break in service if within two years of separation the employee is appointed to a position from a layoff list, the general government transition pool or as a promotional candidate. Upon appointment the employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. For general government employees the time spent off the payroll due to layoff is currently treated like leave without pay and the seniority and unbroken service dates must be adjusted.

We are proposing amending WAC 357-46-058 and 357-58-477 so that for general government employees the time spent off the payroll due to layoff will not be treated as leave without pay regardless of how the employee is appointed.

Although WAC 357-46-059 is a new rule which will address when a higher education employee is rehired following layoff, there is no change to how a higher education employee is treated when rehired following layoff.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-058 and 357-58-477; and new section WAC 357-46-059.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 09-20-101 on October 7, 2009.

Changes Other than Editing from Proposed to Adopted Version: In WAC 357-46-059 removed the general government transition pool (GGTP) language. This new rule was copied from another rule and we did not remove the GGTP information in error. Also, added two sentences to subsection (2) which were inadvertently left off in the original filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at 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 1, Amended 2, Repealed 0.

Date Adopted: November 12, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-058 Is ~~((an))~~ a general government employee who is rehired following layoff considered to have had a break in state service? (1) ~~((An))~~ A general government employee laid off in accordance with the provisions of WAC 357-46-010 or 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position~~((=~~

~~((a) From a layoff list or the general government transition pool; or~~

~~((b) As a promotional candidate in accordance with the employer's promotional policy)).~~

(2) Upon appointment, ~~((the))~~ a general government employee is reinstated with the ~~((seniority and unbroken service the employee had at the time of layoff. For a general government employee, the time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively))~~ anniversary and unbroken service dates the employee had at the time of layoff. A full-time general government employee is given full-time credit toward seniority for the time spent off the payroll due to layoff. As provided in WAC 357-46-055(2) a part-time general government employee's seniority is calculated by determining the number of actual hours worked

and/or in paid status, therefore a part-time employee shall not receive seniority credit for the time spent off the payroll due to layoff.

NEW SECTION

WAC 357-46-059 Is a higher education employee who is rehired following layoff considered to have had a break in state service? (1) A higher education employee laid off in accordance with the provisions of WAC 357-46-010 or 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

(a) From a layoff list; or

(b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the higher education employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. Time spent off the payroll due to layoff is treated as leave without pay. Each higher education employer's layoff procedure will define how seniority and unbroken service dates are adjusted for periods of leave without pay.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-58-477 Is a WMS employee who is rehired following layoff considered to have had a break in state service? (1) An employee laid off in accordance with the provisions of WAC 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position(~~(-~~

~~(a) From the general government transition pool; or~~

~~(b) As a promotional candidate in accordance with the employer's promotional policy)).~~

(2) Upon appointment, ~~((the))~~ an employee is reinstated with the ~~((seniority))~~ anniversary and unbroken service dates the employee had at the time of layoff. ~~((Time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively))~~ A full-time employee is given full-time credit toward seniority for the time spent off the payroll due to layoff. As provided in WAC 357-46-055(2) a part-time employee's seniority is calculated by determining the number of actual hours worked and/or in paid status, therefore a part-time employee shall not receive seniority credit for the time spent off the payroll due to layoff.

WSR 09-23-060

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed November 12, 2009, 2:57 p.m., effective December 15, 2009]

Effective Date of Rule: December 15, 2009.

Purpose: The proposed rule amendment will give employers discretion of whether or not to count time served

in a current probationary or trial service period toward the probationary or trial service period of a new position.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-070.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 09-20-102 on October 7, 2009.

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 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 1, Repealed 0.

Date Adopted: November 12, 2009.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-070 What happens if an employee who is serving a probationary or trial service period accepts an appointment to another permanent position with the same employer? If an employee accepts an appointment to another permanent position with the same employer while serving a probationary or trial service period, the following applies:

(1) ~~((Time served in the initial probationary or trial service period counts towards the probationary or trial service period of the new position))~~ If the employer determines the positions or classes to which the positions are allocated are closely related the employer may count time served in the initial probationary or trial service toward the probationary or trial service period of the new position; or

(2) ~~((The probationary or trial service period starts over))~~ If the employer determines the positions or classes to which the positions are allocated are not closely related the probationary or trial service period of the new position starts over.

WSR 09-23-063

PERMANENT RULES

HORSE RACING COMMISSION

[Filed November 13, 2009, 8:11 a.m., effective December 14, 2009]

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

Purpose: To amend WAC 260-36-220 to (1) clarify how exercise rider premiums are determined at Class A, B and C tracks; (2) eliminate the current per twelve horse calculation and set premiums based upon each horse in training (stalled

at a Class A or B track or started at a Class C track); and (3) clarify the trainer's responsibility to maintain records and to accurately [accurately] report the number of horses, which would required [require] the trainer to pay additional industrial insurance premiums to cover licensed exercise riders. In addition, to amend WAC 260-36-230 to exclude the industrial insurance premiums for exercise riders from the short duration exception to the requirement to pay full coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-220 and 260-36-230.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 09-20-068 on October 5, 2009.

Changes Other than Editing from Proposed to Adopted Version: Subsection one was changed to (1) clarify which type of licenses are covered under this section (current practice); and (2) to remind trainers to ensure all their employees are properly licensed (repeating current provision of WAC 260-28-230).

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 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 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 12, 2009.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-087, filed 2/15/08, effective 3/17/08)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for ~~((stalls and horses started))~~ exercise riders. (1) At the time of licensing, and as provided in this section, a trainer must pay ~~((all))~~ the annual industrial insurance premiums for exercise riders established by labor and industries, unless exempted under WAC 260-36-240. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(2)(a) A trainer at a Class A or B track must pay all required annual industrial insurance premiums ~~((based upon the number of stalls the trainer has))~~ for exercise riders equal to the maximum number of horses in training on any given day during the calendar year that the trainer has both on and off the grounds of a racing association. ~~((All trainers at a~~

Class A or B track are required to pay at least one stall premium at the time of licensing. As to stalls off the grounds of a racing association, a trainer must count all stalls that are used for horses subject to being ridden by licensed exercise riders employed by the trainer, if the exercise riders are to be covered by Washington labor and industries industrial insurance under the horse industry account.))

~~((The calculations for number of stalls will be based upon stalls allotted by the racing association.~~

~~((e) The number of stall premiums that a trainer is required to pay will be determined as follows:~~

~~((i) For zero to twelve stalls a trainer must pay for one stall premium;~~

~~((ii) For thirteen to twenty-four stalls a trainer must pay for two stall premiums;~~

~~((iii) For twenty-five to thirty-six stalls a trainer must pay for three stall premiums; and~~

~~((iv) For thirty-seven or more stalls a trainer must pay for four stall premiums.))~~ For horses on the grounds of a Class A or B track, a trainer must count stalls that are occupied by horses (including horses that are sick or injured) under the trainer's care. Premiums will be calculated on the total number of stalls allotted by the racing association, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse.) Stalls assigned to and occupied by pony horses will not be counted.

(c) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(d) If any trainer increases the number of ~~((stalls))~~ horses in training or racing, either on or off the grounds ~~((s))~~ during the ~~((license))~~ calendar year, the trainer is responsible to pay the additional ~~((stall))~~ premiums ~~((owed))~~ as provided in this section.

(e) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(f) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. Any time during the calendar year if a trainer increases the number of horses in training or racing beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

(3)(a) A trainer at a Class C track must pay industrial insurance ~~((horse-start))~~ premiums ~~((based upon the))~~ for exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track

are required to pay industrial insurance for at least one (horse start premium) horse.

(b) ~~((The number of horse start premiums a trainer is required to pay will be determined as follows:~~

~~(i) For zero to twelve different horses started, a trainer must pay for one horse start premium;~~

~~(ii) For thirteen to twenty-four different horses started, a trainer must pay for two horse start premiums;~~

~~(iii) For twenty-five to thirty-six different horses started, a trainer must pay for three horse start premiums; and~~

~~(iv) For thirty-seven or more different horses started, a trainer must pay for four horse start premiums.~~

~~(e)) If(;) during the calendar year(;) a horse is started by more than one trainer(;) that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer ~~((for the purpose of calculating the number of horse start premiums required)).~~~~

~~((d)) (c) It is the ((trainer is responsible)) trainer's responsibility to maintain ((their)) records ((e)) and accurately report the number of different horses started(, and to pay the additional horse start premiums owed, when they) or in training for the purpose of paying industrial insurance premiums required in this section. Any time during the calendar year if a trainer increases the number of different horses started ((in a race as described in this section)) or the total number of horses in training beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.~~

AMENDATORY SECTION (Amending WSR 08-05-087, filed 2/15/08, effective 3/17/08)

WAC 260-36-230 Short duration industrial insurance coverage. (1) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage ~~((under the following)) that will reduce the trainer's base premium and the groom and/or assistant trainer slot(s).~~ The reduced premiums for short duration coverage will not apply to the additional premiums required to cover exercise riders as provided in WAC 260-36-220. The following conditions will apply for short duration coverage:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot or assistant trainer slot obtained ~~((, assistant trainer hired, and each industrial insurance stall premium as required in WAC 260-36-220))~~ (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot or assistant trainer slot obtained ~~((, assistant trainer~~

~~hired, and each industrial insurance horse start premium as required in WAC 260-36-220))~~ (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class C race meets. A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission.

WSR 09-23-076

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 16, 2009, 11:31 a.m., effective December 17, 2009]

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

Purpose: The proposed changes complete the transfer of the rule from the state board of education to the office of superintendent of public instruction. It also provides information on the updated waiver process to make it clearer for schools going through the process.

Citation of Existing Rules Affected by this Order: Amending WAC 392-410-117.

Statutory Authority for Adoption: RCW 28A.655.180 (1).

Adopted under notice filed as WSR 09-10-059 on May 4, 2009.

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 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 1, Repealed 0.

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

Date Adopted: June 10, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-117 Temporary exemption from ~~((course and))~~ credit requirements. Annual exemptions to the definition of an annualized high school credit may be granted upon the request of a public or approved private school which offers evidence ~~((that delineates content, time, or competency assessments))~~ of student learning which ~~((are))~~ is substantially equivalent to the definition stated in WAC 180-51-050. The ~~((waiver))~~ request for exemption process shall be administered by the ~~((state board of education))~~ office of superintendent of public instruction. Guidelines and the application for the annual request for exemption can be found on the superintendent of public instruction's web site or through the private school approval process.

WSR 09-23-082

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 16, 2009, 4:37 p.m., effective December 17, 2009]

Effective Date of Rule: December 17, 2009.

Purpose: WAC 246-12-050, the rule provides for a temporary practice permit to be issued to an otherwise qualified applicant for a profession listed in RCW 18.130.040 (2)(a) if a fingerprint-based national background check must be conducted. The licensing delays caused by the national background check has affected the public's access to health care. The permanent rule will replace the emergency rule adopted September 1, 2009.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075.

Adopted under notice filed as WSR 09-19-116 on September 22, 2009.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Date Adopted: November 12, 2009.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-12-050 How to obtain a temporary practice permit. Fingerprint-based national background checks

may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed. This section applies to any profession listed in RCW 18.130.040 (2)(a) that does not currently issue a temporary practice permit under the profession's specific statute or rule, unless the profession prohibits temporary practice permits by statute or rule.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 09-23-083

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 16, 2009, 4:53 p.m., effective December 17, 2009]

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

Purpose: WAC 246-976-420 and 246-976-430, amending sections to update the trauma registry requirements. The purpose of the rule revisions is to update the trauma registry requirements in order for the department to collect the most critical and relevant data on trauma injuries. More relevant data is needed to assess the current trauma delivery system and improve the quality, effectiveness, efficiency and accessibility of the state's trauma system.

Citation of Existing Rules Affected by this Order: Amending WAC 246-976-420 and 246-976-430.

Statutory Authority for Adoption: RCW 70.168.060 and 70.168.090.

Adopted under notice filed as WSR 09-16-140 on August 5, 2009.

Changes Other than Editing from Proposed to Adopted Version: In response to stakeholders' requests, minor clarifying edits were made in the rules submitted in the CR-103 documents. The department of health (department) amended proposed trauma registry standards rules following the CR-102 public hearing in response to requests for clarification from stakeholders. Clarifying language changes were made as follows:

WAC 246-976-430:

- Subsection (5)(b), clarifying language on where data is to be submitted.
- Subsection (5) Table F, revising the abbreviation for fresh frozen plasma - Factor VIIa - to be upper case rather than lower case.
- Subsection (5) Table G, under patient information, eliminating reference to "trauma tag/identification number (C)."
- Subsection (5) Table G, under other information, eliminating reference to functional independence measure (FIM) and adding clarifying term, "Inpatient rehabilitation facility—Patient assessment instrument (IRF - PAI)" as the more current terminology.
- Subsection (5) Table G, under patient information, eliminating term, "trauma tag/identification number (C)."

A final cost-benefit analysis is available by contacting Kathy Schmitt, P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2869, fax (360) 236-2830, e-mail kathy.schmitt@doh.wa.gov.

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

Number of Sections Adopted at 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: November 16, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

WAC 246-976-420 Trauma registry—Department responsibilities. (1) **Purpose:** The department maintains a

trauma registry, as required by RCW 70.168.060 and 70.168.090. The purpose of this registry is to:

(a) Provide data for injury surveillance, analysis, and prevention programs;

(b) Monitor and evaluate the outcome of care of major trauma patients, in support of statewide and regional quality assurance and system evaluation activities;

(c) Assess compliance with state standards for trauma care;

(d) Provide information for resource planning, system design and management;

(e) Provide a resource for research and education.

(2) **Confidentiality:** It is essential for the department to protect information regarding specific patients and providers. Data elements related to the identification of individual patient's, provider's, and facility's care outcomes shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(a) The department may release confidential information from the trauma registry in compliance with applicable laws and regulations. No other person may release confidential information from the trauma registry without express written permission from the department.

(b) The department may approve requests for trauma registry data from qualified agencies or individuals, consistent with applicable statutes and rules. The department may charge reasonable costs associated with such requests.

(c) The data elements indicated (~~(as confidential)~~) in Tables E, F and G below are considered confidential.

(d) The department will establish criteria defining situations in which additional registry information is confidential, in order to protect confidentiality for patients, providers, and facilities.

(e) This paragraph does not limit access to confidential data by approved regional quality assurance programs established under chapter 70.168 RCW and described in WAC 246-976-910.

(3) **Inclusion criteria:**

(a) The department will establish inclusion criteria to identify those injured patients that designated trauma services must report to the trauma registry.

These criteria will include:

~~((+))~~ All patients who were discharged with ICD diagnosis codes of 800.0 - 904.99, 910 - 959.9 (injuries), 994.1 (drowning), 994.7 (asphyxiation), or 994.8 (electrocution) and:

~~((A))~~ (i) For whom the hospital trauma resuscitation team (full or modified) was activated; or

~~((B))~~ (ii) Who were dead on arrival at your facility; or

~~((C))~~ (iii) Who were dead at discharge from your facility; or

~~((D))~~ (iv) Who were transferred by ambulance into your facility from another facility; or

~~((E))~~ (v) Who were transferred by ambulance out of your facility to another acute care facility; or

~~((F))~~ (vi) Adult patients (age fifteen or greater) who were admitted as inpatients to your facility and have a length of stay greater than two days or forty-eight hours; or

~~((G))~~ (vii) Pediatric patients (ages under fifteen years) who were admitted as inpatients to your facility, regardless of length of stay; or

~~((ii))~~ All patients who meet the requirements of the state of Washington prehospital trauma triage procedures described in WAC 246-976-930(3); ~~((iii))~~ (viii) All injuries flow from the scene;

(b) For all licensed rehabilitation services, these criteria will include all patients who were included in the trauma registry for acute care.

(4) **Other data:** The department and regional quality assurance programs may request data from medical examiners and coroners in support of the registry.

(5) **Data linking:** To link data from different sources, the department will establish procedures to assign a unique identifying number (~~((trauma band number))~~) to each trauma patient. All providers reporting to the trauma registry must include this trauma number.

(6) **Data submission:** The department will establish procedures and format for providers to submit data electronically. These will include a mechanism for the reporting agency to check data for validity and completeness before data is sent to the registry.

(7) **Data quality:** The department will establish mechanisms to evaluate the quality of trauma registry data. These mechanisms will include at least:

(a) Detailed protocols for quality control, consistent with the department's most current data quality guidelines.

(b) Validity studies to assess the timeliness, completeness and accuracy of case identification and data collection. ~~((The department will report quarterly on the timeliness, accuracy and completeness of data.))~~

(8) **Registry reports:**

(a) Annually, the department will report:

(i) Summary statistics and trends for demographic and related information about trauma care, for the state and for each EMS/TC region;

(ii) Outcome measures, for ~~((evaluation of clinical care and))~~ system-wide ~~((quality assurance and))~~ evaluation, and regional quality improvement programs(-

~~((b))~~ ~~((Semiannually, the department will report: (i))~~);

~~((iii))~~ Trends, patient care outcomes, and other data, for each EMS/TC region and for the state, for the purpose of regional evaluation;

~~((ii))~~ ~~((On all patient data entered into the trauma registry during the reporting period;~~

~~((iii))~~ (iv) Aggregate regional data to the regional EMS/TC council, excluding any confidential or identifying data.

~~((e))~~ The department will provide:

(i) Provider specific raw data to the provider that originally submitted it;

(ii) Periodic reports on financial data;

~~((iii))~~ Registry reports to all providers that have submitted data;

~~((iv))~~ For the generation of quarterly reports to all providers submitting data to the registry, for the purpose of planning, management, and quality assurance-)) (b) The department will provide reports to facilities upon request, according

to the confidentiality provisions in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

WAC 246-976-430 Trauma registry—Provider responsibilities. (1) ~~((Trauma care providers, prehospital and hospital, must place a trauma ID band on trauma patients, if not already in place from another agency.~~

~~((2))~~ All trauma care providers must protect the confidentiality of data in their possession and as it is transferred to the department.

~~((3))~~ (2) All trauma care providers must correct and resubmit records which fail the department's validity tests described in WAC 246-976-420~~((6))~~ (7). You must send corrected records to the department within three months of notification.

~~((4))~~ (3) Licensed prehospital services that transport trauma patients must:

(a) ~~((Assure personnel use the trauma ID band.))~~ Provide an initial report of patient care to the receiving facility at the time the trauma patient is delivered as described in WAC 246-976-330.

(b) ~~((Report data as shown in Table E for trauma patients defined in WAC 246-976-420. Data is to be reported to the receiving facility in an approved format within ten days.~~

~~((5))~~ Within ten days after the trauma patient is delivered, send a complete patient care report to the receiving facility to include the data shown in Table E.

(4) Designated trauma services must:

(a) ~~((Assure personnel use the trauma ID band.))~~ Have a person identified as responsible for coordination of trauma registry activities.

(b) Report data elements shown in Table F for all patients defined in WAC 246-976-420.

(c) Report patients ~~((discharged))~~ in a calendar quarter in ~~((an))~~ a department-approved format by the end of the following quarter. ~~((The department encourages more frequent data reporting.~~

~~((6))~~ (5) Designated trauma rehabilitation services must: ~~((a))~~ Report data on all patients who were included in the trauma registry for acute care.

~~((b))~~ Report either:

~~((i))~~ Provide data to the trauma registry upon request.

~~((a))~~ Data elements shown in Table G; or

~~((ii))~~ (b) If the service submits data to the ~~((uniform data set))~~ Centers for Medicare and Medicaid Services (CMS) for medical rehabilitation, provide a copy of the data to the department.

TABLE E: Prehospital Data Elements for the Washington Trauma Registry

| Data Element | Type of patient | Pre-Hosp Transport | Inter-Facility |
|--|-----------------|--------------------|----------------|
| ((Note: (C) identifies elements that are confidential. See WAC 246-976-420- (2)(e))) | | | |
| Incident Information | | | |
| ((Agency identification number (C))) <u>Transporting EMS agency number</u> | | X | X |
| ((Date of response (C – day only))) <u>Unit en route date/time</u> | | X | ((X)) |
| ((Run sheet number (C))) <u>Patient care report number</u> | | X | X |
| First EMS agency on scene identification number (((C))) | | X | |
| ((Level of personnel)) <u>Crew member level</u> | | X | X |
| Mode of transport | | X | X |
| Incident county (((code))) | | X | |
| <u>Incident zip code</u> | | X | |
| Incident location (((t)) type((t))) | | X | |
| Incident response area type | | X | |
| <u>Mass casualty incident declared</u> | | | |
| Patient Information | | | |
| ((Patient's trauma identification band number (C))) | | X | X)) |
| Name (((C))) | | X | X |
| Date of birth (((C))), or Age | | X | X |
| Sex | | X | X |
| ((Mechanism of injury)) <u>Cause of injury</u> | | X | |
| ((Safety restraint or device used)) <u>Use of safety equipment (occupant)</u> | | X | |
| <u>Extrication required</u> | | | |
| <u>Extrication > 20 minutes</u> | | | |
| Transportation | | | |
| <u>Facility transported from (code)</u> (((C – if hospital ID))) | | ((X)) | X |
| ((Reason for destination decision)) | | X | X)) |
| Times | | | |
| ((Transporting agency dispatched)) <u>Unit notified by dispatch date/time</u> | | X | X |
| ((Transporting agency arrived at scene)) <u>Unit arrived on scene date/time</u> | | X | X |
| ((Transporting agency departed from scene)) <u>Unit left scene date/time</u> | | X | X |
| Vital Signs | | | |
| ((Time)) <u>Date/time vital signs taken</u> | | X | ((X)) |
| Systolic blood pressure (<u>first</u>) | | X | ((X)) |
| Respiratory rate (<u>first</u>) | | X | ((X)) |
| Pulse (<u>first</u>) | | X | ((X)) |
| ((Glasgow coma score (three components))) <u>GCS eye, GCS verbal, GCS motor, GCS total, GCS qualifier</u> | | X | ((X)) |
| ((Pupils | | X | X |
| <u>Vitals from 1st agency on scene?</u> | | X | |

| TABLE E: Prehospital Data Elements for the Washington Trauma Registry | | | |
|---|-----------------|--------------------|----------------|
| Data Element | Type of patient | Pre-Hosp Transport | Inter-Facility |
| Trauma Triage Criteria | | | |
| Vital signs, consciousness level | | X | |
| Anatomy of injury | | X | |
| Biomechanics of injury | | X | |
| Other risk factors | | X | |
| Gut feeling of medic | | X | |
| Prehospital trauma system activation? | | X | |
| Other Severity Measures | | | |
| Respiratory quality | | X | |
| Consciousness | | X | |
| Time (interval) for extrication | | X)) | |
| Treatment: ((EMS interventions)) Procedure performed | | | |
| Procedure performed prior to this unit's care | | X | ((X)) |

TABLE F: Hospital Data Elements for the Washington Trauma Registry

All licensed hospitals must submit the following data for patients identified in WAC 246-976-420(3):
 ((Note: ~~(C)~~ identifies elements that are confidential. See WAC 246-976-420(2).))

Record Identification

- Identification of reporting facility (~~(C)~~);
- Date and time of arrival at reporting facility (~~(C—day only)~~);
- Unique patient identification number assigned to the patient by the reporting facility (~~(C)~~);
- ((Patient's trauma identification band number ~~(C)~~);)

Patient Identification

- Name (~~(C)~~);
- Date of birth (~~(C—day only)~~);
- Sex;
- Race;
- Ethnicity;

Was the patient pregnant;

- Last four digits of Social Security number (~~(C)~~);
- Home zip code;

Prehospital Incident Information

- Date and time of incident (~~(C—day only)~~);
- ((Prehospital trauma system activated?;))
- Incident zip code;
- Mechanism/type of injury;
- First EMS agency on-scene ID number;
- ((Arrival via EMS system?;))
- Transporting (~~(reporting)~~) agency ID and unit number;
- Transporting agency (~~(unit)~~) patient care report number (~~(C)~~);
- ((Mechanism of injury;
- Respiratory quality;

- Consciousness;)) Cause of injury;
- Incident county code;
- Incident location type;
- Incident response area type;
- ((Occupational injury?;
- Safety restraint/device used;)) Work related?;
- Use of safety equipment (occupant);

Earliest Available Prehospital Vital Signs

- Time;
- Systolic blood pressure (first);
- Respiratory rate (first);
- Pulse rate (first);
- ((Glasgow coma score (three components);
- Pupils;)) GCS eye, GCS verbal, GCS motor, GCS qualifier, GCS total;
- Intubated at time of scene GCS;
- Pharmacologically paralyzed at time of scene GCS;
- Vitals from ((1st on scene)) first EMS agency((?) on-scene;

Extrication;

- Extrication time over twenty minutes((?));
- ((Prehospital procedures performed;

Prehospital Triage

- Vital signs/consciousness;
- Anatomy of injury;
- Biomechanics of injury;
- Other risk factors;
- Gut feeling of medic;))

Transportation Information

- Date and time ((transporting agency)) unit dispatched;
- Time ((transporting agency)) unit arrived at scene;
- Time ((transporting agency)) unit left scene;
- Transportation mode;
- ((Personnel) Crew member level;
- Transferred in from another facility;
- Transported from (hospital patient transferred from);

~~((Reason for destination;))~~ Who initiated the transfer?:

ED or Admitting Information

Was patient intubated prior to arrival at hospital?:

Readmission:

Direct admit:

Time ED physician called;

~~((ED physician called "code"?:))~~

Time ED physician available for patient care;

~~((Time))~~ Trauma team activated;

Level of trauma team activation;

Time of trauma team activation:

Time trauma surgeon called;

Time trauma surgeon available for patient care;

Vital Signs in ED

~~((Patient dead on arrival at your facility?:))~~

First ~~((and last))~~ systolic blood pressure;

First ~~((and last))~~ temperature;

First ~~((and last))~~ pulse rate;

First ~~((and last))~~ spontaneous respiration rate;

Lowest systolic blood pressure;

First hematocrit level:

Controlled rate of respiration:

Glasgow coma scores (eye, verbal, motor);

Intubated at time of ED GCS:

Pharmacologically paralyzed at time of ED GCS:

Disaster plan implemented:

Injury severity scores

~~((Prehospital Index (PHI) score;))~~

Revised trauma score (RTS) on admission;

For pediatric patients:

Pediatric trauma score (PTS) on admission;

~~((Pediatric Risk of Mortality (PRISM) score on admission;~~

~~Pediatric Risk of Mortality—Probability of Survival (PRISM P(s));~~

~~Pediatric Overall Performance Category (POPC);~~

~~Pediatric Cerebral Performance Category (PCPC:))~~

TRISS:

ED procedures performed;

ED ~~((complications))~~ care issues;

Date and time of ED discharge;

ED discharge disposition, including

~~((If admitted, the admitting service;))~~

If transferred out, ID of receiving hospital;

Was patient admitted to hospital?:

If admitted, the admitting service:

Reason for referral (receiving facility):

Reason for transfer (sending facility):

Diagnostic and Consultative Information

Date and time of head CT scan;

For patients with diagnosis of brain or facial injury:

Was the patient diagnosed with brain or facial injury before transfer?:

Was the diagnosis of brain or facial injury based on either physician documentation or head CT report?:

Did the patient receive Coumadin or warfarin medication in the four days prior to injury?:

Date/time of first international normalized ratio (INR) performed at your hospital:

Results of first INR done at your hospital:

Source of date and time of CT scan of head:

Was fresh frozen plasma (FFP) or Factor VIIa administered for reversal of anticoagulation?:

What medication was first used to reverse anticoagulation?:

Date and time of first dose of anticoagulation reversal medication:

Date of physical therapy consult;

Date of rehabilitation consult;

Blood alcohol content;

Toxicology screen results;

Drugs found;

Was a brief substance use intervention done?:

~~((Co-morbid))~~ Comorbid factors/preexisting conditions:

Surgical Information

For the first operation:

Date and time patient arrived in operating room;

Date and time operation started;

OR procedure codes;

OR disposition:

For later operations:

Date and time of operation;

OR procedure codes;

OR disposition:

Critical Care Unit Information

Patient admitted to ICU:

Patient readmitted to ICU:

Date and time of admission for primary stay in critical care unit;

Date and time of discharge from primary stay in critical care unit;

Length of readmission stay(s) in critical care unit;

Other in-house procedures performed (not in OR)

Discharge Status

Date and time of facility discharge ~~((C—day only))~~;

Most recent ICD diagnosis codes/discharge codes, including nontrauma codes;

E-codes, primary and secondary;

Glasgow Score at discharge;

Disability at discharge (feeding/locomotion/expression);

Total ventilator days:

Discharge disposition

Hospital discharge disposition:

If transferred out, ID of facility patient was transferred to ~~((C))~~

Rehabilitation facility ID:

If patient died in your facility

Date and time of death ~~((C—day only))~~;

Was an autopsy done?;

~~((Was case referred to coroner or medical examiner?~~

~~Did coroner or medical examiner accept jurisdiction?))~~

Was patient declared brain dead prior to expiring?:

Was life support withdrawn?:

Was ~~((patient evaluated for))~~ organ donation requested?:

Organs donated?:

Financial Information (All Confidential)

For each patient

Total billed charges;

Payer sources (by category);

Reimbursement received (by payer category);

~~((Annually, submit ratio of costs to charges, by department))~~

TABLE G: Data Elements for Designated Rehabilitation Services

Designated trauma rehabilitation services must ~~((submit))~~ provide the following data upon request by the department for patients identified in WAC 246-976-420(3).

~~((Note: ~~(C)~~ identifies elements that are confidential. WAC 246-976-420(2))~~

Rehabilitation services, Levels I and II

Patient Information

- Facility ID ~~((C))~~
- Facility code
- Patient code
- ~~((Trauma tag/identification Number (C))~~
- Date of birth ~~((C-day only))~~
- Social Security number ~~((C))~~
- Patient name ~~((C))~~
- Patient sex

Care Information

- Date of admission ~~((C-day only))~~
- Admission class
- Date of discharge ~~((C-day only))~~
- Impairment group code
- ASIA impairment scale

Diagnosis (ICD-9) Codes

- Etiologic diagnosis
- Other significant diagnoses
- Complications/comorbidities
- Diagnosis for transfer or death

Other Information

- Date of onset
- Admit from (type of facility)
- Admit from (ID of facility)
- Acute trauma care by (ID of facility)
- Prehospital living setting
- Prehospital vocational category
- Discharge-to-living setting

~~((Functional Independence Measure (FIM)))~~ Inpatient Rehabilitation Facility - Patient Assessment Instrument (IRF-PAI) - One set on admission and one on discharge

- Self care
- Eating
- Grooming
- Bathing
- Dressing - Upper
- Dressing - Lower
- Toileting
- Sphincter control
- Bladder
- Bowel
- Transfers
- Bed/chair/wheelchair
- Toilet
- Tub/shower
- Locomotion
- Walk/wheelchair

- Stairs
- Communication
- Comprehension
- Expression
- Social cognition
- Social interaction
- Problem solving
- Memory

Payment Information (all confidential)

- Payer source - primary and secondary
- Total charges
- Remitted reimbursement by category

Rehabilitation, Level III

Patient Information

- Facility ID ~~((C))~~
- Patient number ~~((C))~~
- ~~Trauma tag/identification Number (C))~~
- Social Security number ~~((C))~~
- Patient name ~~((C))~~

Care Information

- Date of admission ~~((C-day only))~~

Impairment Group Code

Diagnosis (ICD-9) Codes

- Etiologic diagnosis
- Other significant diagnoses
- Complications/comorbidities

Other Information

- Admit from (type of facility)
- Admit from (ID of facility) ~~((C))~~
- Acute trauma care given by (ID of facility) ~~((C))~~
- Inpatient trauma rehabilitation given by (ID of facility) ~~((C))~~

- Discharge-to-living setting

Payment Information (all confidential)

- Payer source - primary and secondary
- Total charges
- Remitted reimbursement by category

WSR 09-23-085

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 16, 2009, 5:21 p.m., effective December 17, 2009]

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

Purpose: Repealing WAC 246-976-485 through 246-976-887, designation of trauma care facilities. Adding new sections WAC 246-976-580, 246-976-700, and 246-976-800. These sections establish the department's responsibilities for statewide trauma service designation and establish rehabilitation standards for adults and pediatric services and trauma rehabilitation services.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-976-485 through 246-976-887.

Statutory Authority for Adoption: RCW 70.168.050, 70.168.060, and 70.168.070.

Adopted under notice filed as WSR 09-18-121 on September 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: Only minor edits were made to clarify the intent of the rules. The department of health (department) amended proposed trauma services designation rules following the CR-102 public hearing in response to requests for clarification from stakeholders. Clarifying language changes were made as follows:

New section WAC 246-976-580:

- Language revised to consistently refer to the term "trauma rehabilitation services."
- Subsection (1)(d), inserting "service" in the phrase, "pediatric trauma service designation."
- Subsection (2)(b), inserting clarifying language to better explain application process.
- Subsection (2)(d), inserting terms "health care" and "trauma service" for clarification.
- Subsection (2)(e), inserting term "trauma service" for clarification.
- Subsection (3), inserting the term "at least" for clarification of minimal requirements.
- Subsection (3)(a)(i), adding clarifying language regarding compliance standards.
- Subsection (3)(iii) and (iv), adding terms "if applicable" for clarification.
- Subsection (4)(d)(v), revising for purposes of plain talk principles.
- Subsection (8)(a), clarifying rules reference to health care facilities.
- Subsection (9), replacing language with "or" versus "and/or."
- Subsection (10)(a), revising for purposes of plain talk principles.
- Subsection (10)(c), revising for purposes of plain talk principles.
- Subsection (11), revising for purposes of plain talk principles.

New section WAC 246-976-700:

- Subsection (4)(o), adding term "trauma services" for clarification.
- Subsection (19)(a)(iii) and (iv), adding clarifying language to be more explicit of the department's intent for surgeon's arrival upon notification of patient's arrival.
- Subsection (19)(a)(v), clarifying language regarding qualifications and surgeon arrival time.
- Subsection (19)(a)(vi), clarifying language regarding surgeon arrival time.
- Subsection (19)(a)(vii), clarifying language regarding training requirements.
- Subsection (20)(a)(ii), clarifying neurosurgery services requirement.
- Subsection (20)(e), clarifying orthopedic surgery services requirement.
- Subsection (27)(a)(ii), adding Xs to indicate required level facility participation.
- Subsection (35), adding language "Provisions to allow for..." to make a complete sentence.

New section WAC 246-976-800:

- Subsection (5), adding hyphen.

- Subsection (27), replacing language with "and" versus "and/or."

A final cost-benefit analysis is available by contacting Kathy Schmitt, P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2969, fax (360) 236-2830, e-mail kathy.schmitt@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 18.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 0, Repealed 18.

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 3, Amended 0, Repealed 18.

Date Adopted: November 12, 2009.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-976-580 Trauma designation process. The department designates health care facilities to provide adult and pediatric acute care trauma services ("trauma services") and adult and pediatric trauma rehabilitation services ("trauma rehabilitation services") as part of the statewide emergency medical services and trauma care (EMS/TC) system. This section describes the designation process.

(1) The department must:

(a) Provide written notification to all licensed hospitals and to other health care facilities that a new designation period is beginning. The written notification and the EMS/TC regional plans are posted on the department's web site;

(b) Provide a trauma designation application schedule outlining the steps and timeline requirements for a facility to apply for trauma service designation. The schedule must provide each facility at least ninety days to complete an application for trauma designation. The application schedule is posted on the department's web site;

(c) Provide an application for each level, type and combination of designation. Designation applications are released region by region, according to the established schedule;

(d) Conduct a site review for any hospital applying for level I, II, or III adult and/or pediatric trauma service designation to determine compliance with required standards;

(e) Initiate a three-year contract with successful applicants to authorize participation in the trauma system.

(2) To apply for trauma service designation the health care facility must do the following according to the application schedule:

(a) Request an application;

(b) Submit a letter of intent to apply for trauma service designation indicating what level they are applying for;

(c) Submit a completed application(s);

(d) For health care facilities applying for level I, II, III adult and/or pediatric trauma service designation, the facility must complete a site review arranged and conducted by the department according to the following process:

(i) The department will contract with trauma surgeons and trauma nurses to conduct the site review. The review team members must:

(A) Work outside the state, for level I and II site reviews;

(B) Work outside the applicant's EMS&TC region, for level III site reviews;

(C) Maintain the confidentiality of all documents examined, in accordance with RCW 70.41.200 and 70.168.070. This includes, but is not limited to, all trauma patient data, staff discussions, patient, provider, and facility care outcomes, and any reports resulting from the site review;

(D) Present their preliminary findings to the health care facility at the end of the site review visit;

(ii) The department will provide the applicant the names of review team members prior to the site review. Any objections must be sent to the department within ten days of receiving the department's notification of review team members;

(iii) A site review fee, as established in WAC 246-976-990, is charged and must be paid by the health care facility prior to the site review. A standard fee schedule is posted on the department's web site. For facilities applying for more than one type of designation or for joint designation, fee rates can be obtained by contacting the department;

(iv) The applicant must provide the department and the site review team full access to the facility, facility staff, and all records and documents concerning trauma care including trauma patient data, education, training and credentialing documentation, standards of care, policies, procedures, protocols, call schedules, medical records, quality improvement materials, receiving facility patient feedback, and other relevant documents;

(e) For health care facilities applying for level IV or V trauma service designation, level I, II, or III trauma rehabilitation service designation or level I pediatric trauma rehabilitation service designation, the department may, at its discretion, conduct a site review as part of the application process to determine compliance with required standards. If a site review is conducted, the process will be the same as identified in (d) of this subsection, except a site review fee will not be charged.

(3) The department will designate the health care facilities it considers most qualified to provide trauma care services including when there is competition for trauma service designation within a region. There is competition for designation within a region when the number of applications for a level and type of designation is more than the maximum number of trauma services identified in the approved EMS/TC regional plan. The department will evaluate at least the following in making its decisions:

(a) The quality of the health care facility's performance, based on:

(i) The submitted application, attachments and any other information the department requests from the facility to verify compliance, or the ability to comply with trauma standards;

(ii) Recommendations from the site review team;

(iii) Trauma patient outcomes during the previous designation period, if applicable;

(iv) Compliance with the contract during the previous designation period, if applicable;

(b) The health care facility's conformity with the EMS/TC regional and state plans, based on:

(i) The impact of the facility's designation on the effectiveness of the trauma system;

(ii) Patient volumes for the area;

(iii) The number, level, and distribution of trauma services identified in the state and approved regional plans;

(iv) The facility's ability to comply with state and regional EMS/TC plan goals.

(4) After trauma service designation decisions are made in a region, the department will:

(a) Notify each applicant in writing of the department's designation decision;

(b) Send each applicant a written report summarizing the department's findings, recommendations and additional requirements to maintain designation. If a site review was conducted as part of the application process, the review team findings and recommendations are also included in the written report. Reports are sent:

(i) Within sixty days of announcing designation decisions for level IV and V trauma services and trauma rehabilitation services;

(ii) Within one hundred twenty days of the site review for level I, II and III adult and pediatric trauma services and any other facility that received a site review as part of the application process;

(c) Notify the EMS/TC regional council of designation decisions within the region and all subsequent changes in designation status;

(d) Initiate a trauma designation contract with successful applicants. The contract will include:

(i) Authority from the department to participate in the state trauma system, receive trauma patients from EMS agencies, and provide trauma care services for a three-year period;

(ii) The contractual and financial requirements and responsibilities of the department and the trauma service;

(iii) A provision to allow the department to monitor compliance with trauma service standards;

(iv) A provision to allow the department to have full access to trauma patient data; the facility, equipment, staff and their credentials, education, and training documentation, and all trauma care documents such as: Standards of care, policies, procedures, protocols, call schedules, medical records, quality improvement documents, receiving facility patient feedback, and other relevant documents;

(v) The requirement to maintain confidentiality of information relating to individual patient's, provider's and facility's care outcomes under RCW 70.41.200 and 70.168.070;

(e) Notify the designated trauma service and other interested parties in the region of the next trauma designation

application process at least one hundred fifty days before the contract expires.

(5) Designated trauma services may ask the department to conduct a site review for technical assistance at any time during the designation period. The department has the right to require reimbursement for the costs of conducting the site review.

(6) The department will not approve an application for trauma service designation if the applicant:

(a) Is not the most qualified, when there is competition for designation; or

(b) Does not meet the trauma care standards for the level applied for; or

(c) Does not meet the requirements of the approved EMS/TC regional plan; or

(d) Has made a false statement about a material fact in its designation application; or

(e) Refuses to permit the department to examine any part of the facility that relates to the delivery of trauma care services, including, but not limited to, records, documentation, or files.

(7) If the department denies an application, the department will send the facility a written notice to explain the reasons for denial and to explain the facility's right to appeal the department's decision in accordance with chapters 34.05 RCW and 246-10 WAC.

(8) To ensure adequate trauma care in the state, the department may:

(a) Provisionally designate health care facilities that are not able to meet all the requirements of this chapter. The provisional designation will not be for more than two years. A department-approved plan of correction must be prepared specifying steps necessary to bring the facility into compliance and an expected date of compliance. The department may conduct a site review to verify compliance with required standards. If a site review is conducted the department has the right to require reimbursement for the cost of conducting the site review;

(b) Consider additional applications at any time, regardless of the established schedule, if necessary to attain the numbers and levels of trauma services identified in the approved EMS/TC regional and state plan;

(c) Consider applications from hospitals located and licensed in adjacent states. The department will evaluate an out-of-state application in the same manner as all other applications. However, if the out-of-state applicant is designated as a trauma service in an adjacent state with an established trauma system whose standards meet or exceed Washington's standards and there is no competition for designation at that level, then the department may use the administrative findings, conclusions, and decisions of the adjacent state's designation evaluation to make the decision to designate. Additional information may be requested by the department to make a final decision.

(9) The department may suspend or revoke a trauma designation if the facility or any owner, officer, director, or managing employee:

(a) Is substantially out of compliance with trauma care standards WAC 246-976-700 through 246-976-800 or chap-

ter 70.168 RCW and has refused or is unwilling to comply after a reasonable period of time;

(b) Makes a false statement of a material fact in the designation application, or in any document required or requested by the department, or in a matter under investigation;

(c) Prevents, interferes with, or attempts to impede in any way, the work of a department representative in the lawful enforcement of chapter 246-976 WAC, 34.05 RCW, 246-10 WAC, or 70.168 RCW;

(d) Uses false, fraudulent, or misleading advertising, or makes any public claims regarding the facility's ability to care for nontrauma patients based on its trauma designation status;

(e) Misrepresents or is fraudulent in any aspect of conducting business.

(10) The Administrative Procedure Act, chapter 34.05 RCW, and chapter 246-10 WAC govern the suspension and revocation process. The department will use the following process to suspend or revoke a facility's trauma designation:

(a) The department will send the facility a written notice to explain the reasons it intends to suspend or revoke the designation and to explain the facility's right to a hearing to contest the department's intended action under WAC 246-10-201 through 246-10-205;

(b) The notice will be sent at least twenty-eight days before the department takes action, unless it is a summary suspension, as provided for in the Administrative Procedure Act and WAC 246-10-301 through 246-10-306;

(c) If a facility requests a hearing within twenty-eight days of the date the notice was mailed, a hearing before a health law judge will be scheduled. If the department does not receive the facility's request for a hearing within twenty-eight days of the date the notice was mailed, the facility will be considered in default under WAC 246-10-204;

(d) For nonsummary suspensions, in addition to its request for a hearing, the facility may submit a plan within twenty-eight days of receiving the notice of the department's intent to suspend, describing how it will correct deficiencies:

(i) The department will approve or disapprove the plan within thirty days of receipt;

(ii) If the department approves the plan, the facility must begin to implement it within thirty days;

(iii) The facility must notify the department when the problems are corrected;

(iv) If, prior to sixty days before the scheduled hearing, the facility is able to successfully demonstrate to the department that it is meeting the requirements of chapters 246-976 WAC and 70.168 RCW, which may require a site review at the facility's expense, the department will withdraw its notice of intent to suspend designation;

(e) The department will notify the regional EMS&TC council of the actions it has taken.

(11) A facility may seek judicial review of the department's final decision under the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

(12) A newly designated or upgraded trauma service must meet education requirements for all applicable personnel according to the following schedule:

(a) At the time of the new designation, twenty-five percent of all personnel must meet the education and training requirements in WAC 246-976-700 through 246-976-800;

(b) At the end of the first year of designation, fifty percent of all personnel must meet the education and training requirements in WAC 246-976-700 through 246-976-800;

(c) At the end of the second year of designation, seventy-five percent of all personnel must meet the education and training requirements defined in WAC 246-976-700 through 246-976-800;

(d) At the end of the third year of designation, and all subsequent designation periods, ninety percent of all personnel must meet the education and training requirements defined in WAC 246-976-700 through 246-976-800.

(13) All currently designated trauma services must have a written education plan with a process for tracking and assuring that new physicians and staff meet all trauma education requirements within the first eighteen months of employment.

NEW SECTION

WAC 246-976-700 Trauma service standards.

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (1) A written trauma scope of service outlining the trauma care resources and capabilities available twenty-four hours every day for: | X | X | X | X | X | X | X | X |
| (a) Adult and pediatric trauma patient care; | X | X | X | X | X | | | |
| (b) Pediatric trauma patient care. | | | | | | X | X | X |
| (2) A trauma medical director responsible for the organization and direction of the trauma service, who: | X | X | X | X | X | | | |
| (a) Is a board-certified general surgeon; | X | X | | | | | | |
| (b) Is a board-certified general surgeon, or a general surgeon advanced cardiac life support (ACLS) trained with current certification in advanced trauma life support (ATLS); | | | X | | | | | |
| (c) Is a board-certified general surgeon or emergency physician, or a general surgeon ACLS trained with current certification in ATLS or a physician ACLS trained with current certification in ATLS; | | | | X | | | | |
| (d) Is a board-certified general surgeon or emergency physician, or a physician ACLS trained with current certification in ATLS, or a physician assistant or advanced registered nurse practitioner ACLS trained and who audits ATLS every four years; | | | | | X | | | |
| (e) Is a board-certified pediatric surgeon, or a board-certified general surgeon, with special competence in the care of pediatric patients; | | | | | | X | X | |
| (f) Is a board-certified general surgeon, with special competence in the care of pediatric patients, or a general surgeon ACLS trained, with current certification in ATLS and with special competence in the care of pediatric patients; | | | | | | | | X |
| (g) Meets the pediatric education requirement (PER) as defined in subsection (27) of this section. | X | X | X | X | X | X | X | X |
| (3) A trauma program manager or trauma service coordinator responsible for the overall operation of trauma service, who: | X | X | X | X | X | X | X | X |
| (a) Is a registered nurse; | X | X | X | X | X | X | X | X |
| (b) Has taken ACLS; | X | X | X | X | X | X | X | X |
| (c) Has successfully completed a trauma nursing core course (TNCC) or a department approved equivalent course, and thereafter completes twelve hours of trauma-related education every three-year designation period. The trauma education must include, but is not limited to, the following topics: | X | X | X | X | X | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (i) Mechanism of injury; | X | X | X | X | X | X | X | X |
| (ii) Shock and fluid resuscitation; | X | X | X | X | X | X | X | X |
| (iii) Initial assessment; | X | X | X | X | X | X | X | X |
| (iv) Stabilization and transport; | X | X | X | X | X | X | X | X |
| (d) Has taken pediatric advanced life support (PALS) or emergency nursing pediatric course (ENPC), and thereafter meets the PER contact hours as defined in subsection (27) of this section; | X | X | X | X | X | | | |
| (e) Has current PALS or ENPC certification; | | | | | | X | X | X |
| (f) Has attended a trauma program manager orientation course provided by the department or a department approved equivalent, within the first eighteen months in the role. | X | X | X | X | X | X | X | X |
| (4) A multidisciplinary trauma quality improvement program that must: | X | X | X | X | X | X | X | X |
| (a) Be lead by the multidisciplinary trauma service committee with the trauma medical director as chair of the committee; | X | X | X | X | X | X | X | X |
| (b) Demonstrate a continuous quality improvement process; | X | X | X | X | X | X | X | X |
| (c) Have membership representation and participation that reflects the facility's trauma scope of service; | X | X | X | X | X | X | X | X |
| (d) Have an organizational structure that facilitates the process of quality improvement, with a reporting relationship to the hospital's administrative team and medical executive committee; | X | X | X | X | X | X | X | X |
| (e) Have authority to establish trauma care standards and implement patient care policies, procedures, guidelines, and protocols throughout the hospital; | X | X | X | X | X | X | X | X |
| (f) Have a process to monitor and track compliance with the trauma care standards using audit filters and benchmarks; | X | X | X | X | X | X | X | X |
| (g) Have a process to evaluate the care provided to trauma patients and to resolve identified prehospital, physician, nursing, or system issues; | X | X | X | X | X | X | X | X |
| (h) Have a process for correcting problems or deficiencies; | X | X | X | X | X | X | X | X |
| (i) Have a process to analyze, evaluate, and measure the effect of corrective actions to determine whether issue resolution was achieved; | X | X | X | X | X | X | X | X |
| (j) Have a process to continuously evaluate compliance with full and modified (if used) trauma team activation criteria; | X | X | X | X | X | X | X | X |
| (k) Have assurance from other hospital quality improvement committees, including peer review if conducted separately from the trauma committee, that resolution was achieved on trauma-related issues; | X | X | X | X | X | X | X | X |
| (l) Have a process to ensure the confidentiality of patient and provider information, in accordance with RCW 70.41.200 and 70.168.090; | X | X | X | X | X | X | X | X |
| (m) Have a process to communicate with, and provide feedback to, referring trauma services and trauma care providers; | X | X | X | X | X | X | X | X |
| (n) Have a current trauma quality improvement plan that outlines the trauma service's quality improvement process, as defined in this subsection; | X | X | X | X | X | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (o) For level III, IV, V trauma services or level III pediatric trauma services with a total annual trauma volume of less than one hundred patients, the trauma service may integrate trauma quality improvement into the hospital's quality improvement program; however, trauma care must be formally addressed in accordance with the quality improvement requirements in this subsection. In that case, the trauma medical director is not required to serve as chair. | | | X | X | X | | | X |
| (5) Written trauma service standards of care to ensure appropriate care throughout the facility for: | X | X | X | X | X | X | X | X |
| (a) Adult and pediatric trauma patients; | X | X | X | X | X | | | |
| (b) Pediatric trauma patients. | | | | | | X | X | X |
| (6) Participation in the regional quality improvement program as defined in WAC 246-976-910. | X | X | X | X | X | X | X | X |
| (7) Participation in the Washington state trauma registry as defined in WAC 246-976-430. | X | X | X | X | X | X | X | X |
| (8) Written transfer-in guidelines consistent with the facility's designation level and trauma scope of service. The guidelines must identify the type, severity and complexity of injuries the facility can safely accept, admit, and provide with definitive care. | X | X | X | X | X | X | X | X |
| (9) Written transfer-out guidelines consistent with the facility's designation level and trauma scope of service. The guidelines must identify the type, severity and complexity of injuries that exceed the resources and capabilities of the trauma service. | X | X | X | X | X | X | X | X |
| (10) Written interfacility transfer agreements with all trauma services that receive the facility's trauma patients. Agreements must have a process to identify medical control during the interfacility transfer, and address the responsibilities of the trauma service, the receiving hospital, and the verified prehospital transport agency. All trauma patients must be transported by a trauma verified prehospital transport agency. | X | X | X | X | X | X | X | X |
| (11) An air medical transport plan addressing the receipt or transfer of trauma patients with a heli-stop, landing zone, or airport located close enough to permit the facility to receive or transfer trauma patients by fixed-wing or rotary-wing aircraft. | X | X | X | X | X | X | X | X |
| (12) A written diversion protocol for the emergency department to divert trauma patients from the field to another trauma service when resources are temporarily unavailable. The process must include: (a) Trauma service and patient criteria used to decide when diversion is necessary; (b) How the divert status will be communicated to the nearby trauma services and prehospital agencies; (c) How the diversion will be coordinated with the appropriate prehospital agency; (d) A method of documenting/tracking when the trauma service is on trauma divert, including the date, time, duration, reason, and decision maker. | X | X | X | X | X | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | X | X | X | X | X | X | X | X |
| (13) A trauma team activation protocol consistent with the facility's trauma scope of service. The protocol must: | X | X | X | X | X | X | X | X |
| (a) Define the physiologic, anatomic, and mechanism of injury criteria used to activate the full and modified (if used) trauma teams; | X | X | X | X | X | X | X | X |
| (b) Identify members of the full and modified (if used) trauma teams consistent with the provider requirements of this chapter; | X | X | X | X | X | X | X | X |
| (c) Define the process to activate the trauma team. The process must: | X | X | X | X | X | X | X | X |
| (i) Consistently apply the trauma service's established criteria; | X | X | X | X | X | X | X | X |
| (ii) Use information obtained from prehospital providers or an emergency department assessment for patients not delivered by a prehospital agency; | X | X | X | X | X | X | X | X |
| (iii) Be applied regardless of time post injury or previous care, whether delivered by prehospital or other means and whether transported from the scene or transferred from another facility; | X | X | X | X | X | X | X | X |
| (iv) Include a method to upgrade a modified activation to a full activation when newly acquired information warrants additional capabilities and resources; | X | X | X | X | X | X | X | X |
| (v) For full trauma team activations, include the mandatory presence of a general surgeon. The general surgeon assumes leadership and overall care - using professional judgment regarding the need for surgery and/or transfer; | X | X | X | | | X | X | X |
| (vi) For full trauma team activations, include the mandatory presence of a general surgeon if general surgery services are included in the facility's trauma scope of service. The general surgeon assumes leadership and overall care - using professional judgment regarding the need for surgery and/or transfer; | | | | X | | | | |
| (vii) For trauma team activations in pediatric designated trauma services (within five minutes for level I, twenty minutes for level II or thirty minutes for level III), one of the following pediatric physician specialists must respond: <ul style="list-style-type: none"> • A pediatric surgeon; • A pediatric emergency medicine physician; • A pediatric intensivist; • A pediatrician; • A postgraduate year two or higher pediatric resident. | | | | | | X | X | X |
| (14) Emergency care services available twenty-four hours every day, with: | X | X | X | X | X | X | X | X |
| (a) An emergency department (except for level V clinics); | X | X | X | X | X | X | X | X |
| (b) The ability to resuscitate and stabilize adult and pediatric trauma patients in a designated resuscitation area; | X | X | X | X | X | | | |
| (c) The ability to resuscitate and stabilize pediatric trauma patients in a designated resuscitation area; | | | | | | X | X | X |
| (d) A medical director, who: | X | X | X | | | X | X | X |
| (i) Is board-certified in emergency medicine or board-certified in general surgery or is board-certified in another relevant specialty practicing emergency medicine as their primary practice; | X | X | X | | | | | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| A facility with a designated trauma service must have: | I | II | III | IV | V | I P | II P | III P |
| (ii) Is board-certified in pediatric emergency medicine, or board-certified in emergency medicine with special competence in the care of pediatric patients or board-certified in general surgery with special competence in the care of pediatric patients, or board-certified in a relevant specialty practicing emergency medicine as their primary practice with special competence in the care of pediatric patients; | | | | | | X | X | X |
| (e) Emergency physicians who: | X | X | X | X | X | X | X | X |
| (i) Are board-certified in emergency medicine or board-certified in a relevant specialty practicing emergency medicine as their primary practice. This requirement can be met by a postgraduate year two or higher emergency medicine or general surgery resident working under the direct supervision of the attending emergency physician. The resident must be available within five minutes of notification of the patient's arrival to provide leadership and care until arrival of the general surgeon; | X | X | | | | | | |
| (ii) Are board-certified in pediatric emergency medicine, or board-certified in emergency medicine with special competence in the care of pediatric patients, or board-certified in a relevant specialty practicing emergency medicine as their primary practice with special competence in the care of pediatric patients. This requirement can be met by a postgraduate year two or higher emergency medicine or general surgery resident with special competence in the care of pediatric trauma patients and working under the direct supervision of the attending emergency physician. The resident must be available within five minutes of notification of the patient's arrival, to provide leadership and care until arrival of the general surgeon; | | | | | | X | X | |
| (iii) Are board-certified in emergency medicine or another relevant specialty practicing emergency medicine as their primary practice, or physicians practicing emergency medicine as their primary practice with current certification in ACLS and ATLS; | | | X | | | | | |
| (iv) Are board-certified pediatric emergency medicine, or board-certified in emergency medicine or surgery, with special competence in the care of pediatric patients, or board-certified in a relevant specialty practicing emergency medicine as their primary practice, with special competence in the care of pediatric patients, or physicians with current certification in ATLS, practicing emergency medicine as their primary practice, with special competence in the care of pediatric patients; | | | | | | | | X |
| (v) Are board-certified in emergency medicine or another relevant specialty and practicing emergency medicine as their primary practice, or physicians with current certification in ACLS and ATLS. A physician assistant or advanced registered nurse practitioner current in ACLS and who audits ATLS every four years may initiate evaluation and treatment upon the patient's arrival in the emergency department until the arrival of the physician; | | | | X | | | | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (vi) Are board-certified or qualified in emergency medicine, surgery, or other relevant specialty and practicing emergency medicine as their primary practice, or physicians with current certification in ACLS and ATLS or physician assistants (PAs), or advanced registered nurse practitioners (ARNPs) with current certification in ACLS and who audit ATLS every four years; | | | | | X | | | |
| (vii) Are available within five minutes of notification of the patient's arrival in the emergency department; | X | X | X | | | X | X | X |
| (viii) Are on-call and available within twenty minutes of notification of the patient's arrival in the emergency department; | | | | X | X | | | |
| (ix) Are currently certified in ACLS and ATLS. This requirement applies to all emergency physicians and residents who care for trauma patients in the emergency department except this requirement does not apply to physicians who are board-certified in emergency medicine or board-certified in another relevant specialty and practicing emergency medicine as their primary practice; | X | X | X | X | X | | | |
| (x) Are currently certified in ATLS. This requirement applies to all emergency physicians and residents who care for pediatric patients in the emergency department except this requirement does not apply to physicians who are board-certified in pediatric emergency medicine or board-certified in emergency medicine or board-certified in another relevant specialty and practicing emergency medicine as their primary practice; | | | | | | X | X | X |
| (xi) Meet the PER as defined in subsection (27) of this section; | X | X | X | X | X | X | X | X |
| (f) Emergency care registered nurses (RNs), who: | X | X | X | X | X | X | X | X |
| (i) Are in the emergency department and available within five minutes of notification of patient's arrival; | X | X | X | | | X | X | X |
| (ii) Are in-house, and available within five minutes of notification of the patient's arrival (except for level V clinics); | | | | X | X | | | |
| (iii) Have current certification in ACLS; | X | X | X | X | X | | | |
| (iv) Have successfully completed a trauma nurse core course (TNCC) or department approved equivalent course; | X | X | X | X | X | X | X | X |
| (v) Have completed twelve hours of trauma related education every designation period. The trauma education must include, but is not limited to, the following topics: <ul style="list-style-type: none"> • Mechanism of injury; • Shock and fluid resuscitation; • Initial assessment; • Stabilization and transport; | X | X | X | X | | X | X | X |
| (vi) Meet the PER as defined in subsection (27) of this section. | X | X | X | X | X | X | X | X |
| (g) Standard emergency equipment for the resuscitation and life support of adult and pediatric trauma patients, including: | X | X | X | X | X | X | X | X |
| (i) Immobilization devices: | X | X | X | X | X | X | X | X |
| ■ Back board; | X | X | X | X | X | X | X | X |
| ■ Cervical injury; | X | X | X | X | X | X | X | X |
| ■ Long-bone; | X | X | X | X | X | X | X | X |
| (ii) Infusion control device: | X | X | X | X | X | X | X | X |
| ■ Rapid infusion capability; | X | X | X | | | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (iii) Intraosseous needles; | X | X | X | X | X | X | X | X |
| (iv) Sterile surgical sets: | X | X | X | X | X | X | X | X |
| ■ Chest tubes with closed drainage devices; | X | X | X | X | X | X | X | X |
| ■ Emergency transcutaneous airway; | X | X | X | X | X | X | X | X |
| ■ Peritoneal lavage; | X | X | X | X | | X | X | X |
| ■ Thoracotomy; | X | X | X | | | X | X | X |
| (v) Thermal control equipment: | X | X | X | X | X | X | X | X |
| ■ Blood and fluid warming; | X | X | X | X | X | X | X | X |
| ■ Devices for assuring warmth during transport; | X | X | X | X | X | X | X | X |
| ■ Expanded scale thermometer capable of detecting hypothermia; | X | X | X | X | X | X | X | X |
| ■ Patient warming and cooling; | X | X | X | X | X | X | X | X |
| (vi) Other equipment: | X | X | X | X | X | X | X | X |
| ■ Medication chart, tape or other system to assure ready access to information on proper doses-per-kilogram for resuscitation drugs and equipment sizes for pediatric patients; | X | X | X | X | X | X | X | X |
| ■ Pediatric emergency airway equipment readily available or transported in-house with the pediatric patient for evaluation, treatment or diagnostics, including: <ul style="list-style-type: none"> • Bag-valve masks; • Face masks; • Oral/nasal airways. | X | X | X | X | X | X | X | X |
| (15) Respiratory therapy services, with a respiratory care practitioner available within five minutes of notification of patient's arrival. | X | X | X | | | X | X | X |
| (16) Diagnostic imaging services (except for level V clinics), with: | X | X | X | X | X | X | X | X |
| (a) A radiologist in person or by teleradiology, who is: | X | X | X | | | X | X | X |
| (i) On-call and available within twenty minutes of the trauma team leader's request; | X | X | | | | X | X | |
| (ii) On-call and available within thirty minutes of the trauma team leader's request; | | | X | | | | | X |
| (b) Personnel able to perform routine radiological capabilities, who are: | X | X | X | X | X | X | X | X |
| (i) Available within five minutes of notification of the patient's arrival; | X | X | | | | X | X | |
| (ii) On-call and available within twenty minutes of notification of the patient's arrival; | | | X | X | X | | | X |
| (c) A technologist able to perform computerized tomography, who is: | X | X | X | | | X | X | X |
| (i) Available within five minutes of the trauma team leader's request; | X | | | | | X | | |
| (ii) On-call and available within twenty minutes of the trauma team leader's request; | | X | X | | | | X | X |
| (d) Angiography with a technologist on-call and available within thirty minutes of the trauma team leader's request; | X | X | | | | X | X | |
| (e) Magnetic resonance imaging, with a technologist on-call and available within sixty minutes of the trauma team leader's request; | X | X | | | | X | X | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (f) Sonography with a technologist on-call and available within thirty minutes of the trauma team leader's request; | X | X | | | | X | X | |
| (g) Interventional radiology services on-call and available within thirty minutes of the trauma team leader's request. | X | X | | | | X | X | |
| (17) Clinical laboratory services (except for level V clinics), with: | X | X | X | X | X | X | X | X |
| (a) Lab services available within five minutes of notification of the patient's arrival; | X | X | X | | | X | X | X |
| (b) Lab services on-call and available within twenty minutes of notification of the patient's arrival; | | | | X | X | | | |
| (c) Blood gases and pH determination; | X | X | X | X | | X | X | X |
| (d) Coagulation studies; | X | X | X | X | X | X | X | X |
| (e) Drug or toxicology measurements; | X | X | X | X | X | X | X | X |
| (f) Microbiology; | X | X | X | X | X | X | X | X |
| (g) Serum alcohol determination; | X | X | X | X | X | X | X | X |
| (h) Serum and urine osmolality; | X | X | | | | X | X | |
| (i) Standard analysis of blood, urine, and other body fluids. | X | X | X | X | X | X | X | X |
| (18) Blood and blood-component services (except for level V clinics), with: | X | X | X | X | X | X | X | X |
| (a) Ability to obtain blood typing and crossmatching; | X | X | X | X | X | X | X | X |
| (b) Autotransfusion; | X | X | X | | | X | X | X |
| (c) Blood and blood components available from in-house or through community services, to meet patient needs; | X | X | X | X | X | X | X | X |
| (d) Blood storage capability; | X | X | X | X | | X | X | X |
| (e) Noncrossmatched blood available on patient arrival in the emergency department; | X | X | X | X | X | X | X | X |
| (f) Policies and procedures for massive transfusion. | X | X | X | X | | X | X | X |
| (19) General surgery services, with: | X | X | X | | | X | X | X |
| (a) Surgeons who: | X | X | X | | | X | X | X |
| (i) Are board-certified in general surgery and available within five minutes of notification of the patient's arrival when the full trauma team is activated. This requirement can be met by a postgraduate year four or higher surgery resident. The resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until arrival of the general surgeon. In this case the general surgeon must be available within twenty minutes of notification of patient's arrival; | X | | | | | | | |
| (ii) Are board-certified in pediatric surgery or board-certified in general surgery with special competence in the care of pediatric patients and are available within five minutes of notification of the patient's arrival when the full trauma team is activated. This requirement can be met by a post graduate year four or higher pediatric surgery resident or a general surgery resident with special competence in the care of pediatric patients. The resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until arrival of the pediatric or general surgeon. In this case the pediatric or general surgeon must be available within twenty minutes of notification of patient's arrival; | | | | | | X | | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| (iii) Are board-certified in general surgery. For full trauma team activations, the surgeon must be in the emergency department upon patient arrival when prehospital estimated time of arrival (ETA) is twenty minutes or more. Otherwise the surgeon must be in the emergency department within twenty minutes of notification of patient's arrival. This requirement can be met by a postgraduate year four or higher surgery resident. The resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until arrival of the general surgeon; | | X | | | | | | |
| (iv) Are board-certified in pediatric surgery or board-certified in general surgery with special competence in the care of pediatric patients. For full trauma team activations, the surgeon must be in the emergency department upon patient arrival when prehospital estimated time of arrival (ETA) is twenty minutes or more. Otherwise the surgeon must be in the emergency department within twenty minutes of notification of patient's arrival. This requirement can be met by a postgraduate year four or higher pediatric surgery resident or a general surgical resident with special competence in the care of pediatric patients. The resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until arrival of the pediatric or general surgeon; | | | | | | | X | |
| (v) Are board-certified or trained in ACLS and currently certified in ATLS. For full trauma team activations, the surgeon must be in the emergency department upon patient arrival when prehospital estimated time of arrival (ETA) is thirty minutes or more. Otherwise the surgeon must be in the emergency department within thirty minutes of notification of patient's arrival; | | | X | | | | | |
| (vi) Are board-certified or board-qualified, with special competence in the care of pediatric patients. For full trauma team activations, the surgeon must be in the emergency department upon patient arrival when prehospital estimated time of arrival (ETA) is thirty minutes or more. Otherwise the surgeon must be in the emergency department within thirty minutes of notification of patient's arrival; | | | | | | | | X |
| (vii) Are trained in ACLS and currently certified in ATLS. This requirement applies to all surgeons and residents caring for trauma patients except this requirement does not apply to surgeons who are board certified in general surgery; | X | X | X | | | | | |
| (viii) Are currently certified in ATLS. This requirement applies to all surgeons and residents caring for pediatric trauma patients except this requirement does not apply to surgeons who are board certified in pediatric or general surgery; | | | | | | X | X | X |
| (ix) Meet the PER as defined in subsection (27) of this section; | X | X | X | | | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (b) A written plan for general surgery coverage, if the general surgeon on call for trauma is otherwise clinically engaged. The plan must take into consideration the trauma service's total patient volume, patient acuity, geographic proximity to other trauma services, depth of trauma care resources, and the trauma scope of service. The plan must be monitored through the trauma service's trauma quality improvement program; | X | X | X | | | X | X | X |
| (c) For level IV, general surgery services that meet all level III general surgery service standards if the facility's trauma scope of service includes general surgery services twenty-four hours every day, or transfer trauma patients who need general surgery services to a designated trauma service with general surgery services available. | | | | X | | | | |
| (20) Neurosurgery services with neurosurgeons, who are: (a) Board-certified, and: (i) Available within five minutes of the trauma team leader's request; (ii) This requirement can be met by a postgraduate year four or higher neurosurgery resident. The resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until arrival of the neurosurgeon. In this case the neurosurgeon must be available within thirty minutes of the trauma team leader's request; | X X | X | | | | X X | X | |
| (b) Board-certified or board-qualified and on-call and available within thirty minutes of the trauma team leader's request; | | X | | | | | X | |
| (c) For level III and IV, board-certified or board-qualified and on-call and available within thirty minutes of the trauma team leader's request if the facility's trauma scope of service includes neurosurgery services twenty-four hours every day or transfer trauma patients who need neurosurgery services to a designated trauma service with neurosurgery services available. | | | X | X | | | | X |
| (21) Surgical services on-call and available within thirty minutes of the trauma team leader's request for: | X | X | X | | | X | X | X |
| (a) Cardiac surgery; | X | | | | | X | | |
| (b) Microsurgery; | X | | | | | X | | |
| (c) Obstetric surgery or for level III trauma services, a plan to manage the pregnant trauma patient; | X | X | X | | | X | X | X |
| (d) Orthopedic surgery; | X | X | X | | | X | X | X |
| (e) For level IV, orthopedic surgery services on-call and available within thirty minutes of the trauma team leader's request if the facility's trauma scope of service includes orthopedic surgery services twenty-four hours every day, or transfer trauma patients who need orthopedic surgery services to a designated trauma service with orthopedic surgery services available; | | | | X | | | | |
| (f) Thoracic surgery; | X | X | | | | X | X | |
| (g) Urologic surgery; | X | X | | | | X | X | |
| (h) Vascular surgery. | X | X | | | | X | X | |
| (22) Surgical services on-call for patient consultation or management at the trauma team leader's request for: | X | X | | | | X | X | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (a) Cranial facial surgery; | X | X | | | | X | X | |
| (b) Gynecologic surgery; | X | X | | | | X | X | |
| (c) Ophthalmic surgery; | X | X | | | | X | X | |
| (d) Plastic surgery. | X | X | | | | X | X | |
| (23) Anesthesiology services, with board-certified anesthesiologists or certified registered nurse anesthetists (CRNAs), who: | X | X | X | | | X | X | X |
| (a) Are available within five minutes of the trauma team leader's request; | X | | | | | X | | |
| (b) Are on-call and available within twenty minutes of the trauma team leader's request; | | X | | | | | X | |
| (c) Are on-call and available within thirty minutes of the trauma team leader's request; | | | X | | | | | X |
| (d) Are ACLS trained except this requirement does not apply to physicians board-certified in anesthesiology; | X | X | X | | | X | X | X |
| (e) Meet the PER as defined in subsection (27) of this section. | X | X | X | | | X | X | X |
| (f) For level IV, meet all level III anesthesiology service standards, if the facility's trauma scope of service includes surgery services twenty-four hours every day or transfer trauma patients who need surgery services to a designated trauma service with surgery services available. | | | | X | | | | |
| (24) Operating room services, with: | X | X | X | | | X | X | X |
| (a) Hospital staff responsible for opening and preparing the operating room available within five minutes of notification; | X | X | X | | | X | X | X |
| (b) Operating room staff on-call and available within twenty minutes of notification; | X | X | | | | X | X | |
| (c) Operating room staff on-call and available within thirty minutes of notification; | | | X | | | | | X |
| (d) A written plan to mobilize additional surgical team members for trauma patient surgery; | X | X | X | | | X | X | X |
| (e) Standard surgery instruments and equipment needed to perform operations on adult and pediatric patients, including: | X | X | X | | | X | X | X |
| (i) Autologous blood recovery and transfusion; | X | X | X | | | X | X | X |
| (ii) Bronchoscopic capability; | X | X | X | | | X | X | X |
| (iii) Cardiopulmonary bypass; | X | X | | | | X | X | |
| (iv) Craniotomy set; | X | X | | | | X | X | |
| (v) Endoscopes; | X | X | X | | | X | X | X |
| (vi) Rapid infusion capability; | X | X | X | | | X | X | X |
| (vii) Thermal control equipment: | X | X | X | | | X | X | X |
| ■ Blood and fluid warming; | X | X | X | | | X | X | X |
| ■ Patient warming and cooling; | X | X | X | | | X | X | X |
| (f) For level IV, operating room services that meet all level III operating room service standards if the facility's trauma scope of care includes surgery services twenty-four hours every day or transfer trauma patients who need surgery services to a designated trauma service with surgery services available. | | | | X | | | | |
| (25) Post anesthesia care services with: | X | X | X | | | X | X | X |
| (a) At least one registered nurse available twenty-four hours every day; | X | | | | | X | | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (b) At least one registered nurse on-call and available twenty-four hours every day; | | X | X | | | | X | X |
| (c) Registered nurses who are ACLS trained; | X | X | X | | | X | X | X |
| (d) For level IV, post anesthesia care services that meet all level III post anesthesia care service standards if the facility's trauma scope of care includes general surgery services twenty-four hours every day or transfer trauma patients who need surgery services to a designated trauma service with surgery services available. | | | | X | | | | |
| (26) Critical care services, with: | X | X | X | | | X | X | |
| (a) A critical care medical director, who is: | X | X | X | | | X | X | |
| (i) Board-certified in: | X | | | | | | | |
| (A) Surgery and critical care; | X | | | | | | | |
| (B) Pediatric critical care; | | | | | | X | | |
| (ii) Board-certified in critical care or board-certified in surgery, internal medicine or anesthesiology with special competence in critical care; | | X | X | | | | | |
| (iii) Board-certified in critical care, with special competence in pediatric critical care or is board-certified in surgery, internal medicine or anesthesiology, with special competence in pediatric critical care; | | | | | | | X | |
| (iv) Responsible for coordinating with the attending physician for trauma patient care; | X | X | X | | | X | X | |
| (b) Critical care registered nurses, who: | X | X | X | | | X | X | |
| (i) Are ACLS trained; | X | X | X | | | | | |
| (ii) Have special competence in pediatric critical care; | | | | | | X | X | |
| (iii) Have completed a minimum of six contact hours of trauma specific education every three-year designation period; | X | X | | | | X | X | |
| (iv) Have completed a minimum of three contact hours of trauma specific education every three-year designation period; | | | X | | | | | |
| (c) A physician directed code team; | X | X | X | | | X | X | |
| (d) Pediatric patient isolation capacity; | | | | | | X | X | |
| (e) General surgery consults for critical care trauma patients or if intensivists are the primary admitting nonsurgical physician caring for trauma patients, the intensivists must complete a minimum of twelve hours of trauma critical care specific continuing medical education (CME) every three-year designation period; | X | X | X | | | X | X | X |
| (f) Standard critical care equipment for adult and pediatric trauma patients, including: | X | X | X | | | X | X | |
| (i) Cardiac devices: | X | X | X | | | X | X | |
| ■ Cardiac pacing capabilities; | X | X | X | | | X | X | |
| ■ Cardiac monitor with at least two pressure monitoring modules (cardiac output and hard copy recording), with the capability to continuously monitor heart rate, respiratory rate, and temperature; | X | X | X | | | X | X | |
| (ii) Intracranial pressure monitoring devices; | X | X | | | | X | X | |
| (iii) Intravenous supplies: | X | X | X | | | X | X | |
| ■ Infusion control device; | X | X | X | | | X | X | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| ■ Rapid infusion capability; | X | X | X | | | X | X | |
| (iv) Sterile surgical sets: | X | X | X | | | X | X | |
| ■ Chest tubes; | X | X | X | | | X | X | |
| ■ Emergency surgical airway; | X | X | X | | | X | X | |
| ■ Peritoneal lavage; | X | X | X | | | X | X | |
| ■ Thoracotomy; | X | X | X | | | X | X | |
| (v) Thermal control equipment: | X | X | X | | | X | X | |
| ■ Blood and fluid warming; | X | X | X | | | X | X | |
| ■ Devices for assuring warmth during transport; | X | X | X | | | X | X | |
| ■ Expanded scale thermometer capable of detecting hypothermia; | X | X | X | | | X | X | |
| ■ Patient warming and cooling; | X | X | X | | | X | X | |
| (g) A written policy to transfer all pediatric trauma patients who need critical care services to a pediatric designated trauma service with critical care services available; | X | X | X | | | | | |
| (h) For level IV, critical care services that meet all level III critical care service standards, if the facility's trauma scope of service includes critical care services for trauma patients twenty-four hours every day or transfer trauma patients who need critical care services to a designated trauma service with critical care services available; | | | | X | | | | |
| (i) For level III pediatric trauma services, critical care services that meet all level II pediatric critical care service standards if the facility's trauma scope of care includes pediatric critical care services for trauma patients twenty-four hours every day or transfer pediatric trauma patients who need critical care services to a designated pediatric trauma service, with pediatric critical care services available. | | | | | | | | X |
| (27) Pediatric education requirement (PER): | X | X | X | X | X | X | X | X |
| (a) PER must be met by the following providers who are directly involved in the initial resuscitation and stabilization of pediatric trauma patients: | X | X | X | X | X | X | X | X |
| (i) Emergency department physicians; | X | X | X | X | X | X | X | X |
| (ii) Emergency department registered nurses; | X | X | X | X | X | X | X | X |
| (iii) Physician assistants or ARNPs who initiate evaluation and treatment prior to the arrival of the physician in the emergency department; | | | | X | X | | | |
| (iv) Emergency medicine or surgical residents who initiate care prior to the arrival of the emergency physician; | X | X | | | | X | X | |
| (v) General surgeons; | X | X | X | | | X | X | X |
| (vi) Surgical residents who initiate care prior to the arrival of the general surgeon; | X | X | | | | X | X | |
| (vii) Anesthesiologists and CRNAs; | X | X | X | | | X | X | X |
| (viii) General surgeons, anesthesiologists and CRNAs if the facility's trauma scope of service includes general surgery services twenty-four hours every day; | | | | X | | | | |
| (ix) Intensivists involved in the resuscitation, stabilization and in-patient care of pediatric trauma patients; | | | | | | X | X | X |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|--|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | X | X | X | X | X | X | X | X |
| (b) PER must be met by completing pediatric specific contact hours as defined below: | X | X | X | X | X | | | |
| (i) Five contact hours per provider during each three-year designation period; | X | X | X | X | X | | | |
| (ii) Seven contact hours per provider during each three-year designation period; | | | | | | X | X | X |
| (iii) Contact hours should include, but are not limited to, the following topics: <ul style="list-style-type: none"> • Initial stabilization and transfer of pediatric trauma; • Assessment and management of pediatric airway and breathing; • Assessment and management of pediatric shock, including vascular access; • Assessment and management of pediatric head injuries; • Assessment and management of pediatric blunt abdominal trauma; | X | X | X | X | X | X | X | X |
| (iv) Contact hours may be accomplished through one or more, but not limited to, the following methods: <ul style="list-style-type: none"> • Review and discussion of individual pediatric trauma cases within the trauma quality improvement program; • Staff meetings; • Classes, formal or informal; • Web-based learning; • Certification in ATLS, PALS, APLS, ENPC, or other department approved equivalents; • Other methods of learning which appropriately communicates the required topics listed in this section. | X | X | X | X | X | X | X | X |
| (28) Acute dialysis services, or must transfer trauma patients needing dialysis. | X | X | X | X | X | X | X | X |
| (29) A burn center, in accordance with the American Burn Association, to care for burn patients, or must transfer burn patients to a burn center, in accordance with the American Burn Association transfer guidelines. | X | X | X | X | X | X | X | X |
| (30) Services on-call for consultation or patient management: | X | X | X | | | X | X | X |
| (a) Cardiology; | X | X | | | | X | X | |
| (b) Gastroenterology; | X | X | | | | X | X | |
| (c) Hematology; | X | X | | | | X | X | |
| (d) Infectious disease specialists; | X | X | | | | X | X | |
| (e) Internal medicine; | X | X | X | | | | | |
| (f) Nephrology; | X | X | | | | X | X | |
| (g) Neurology; | X | X | | | | X | X | |
| (h) Pediatric neurology; | | | | | | X | X | |
| (i) Pathology; | X | X | X | | | X | X | X |
| (j) Pediatrician; | X | X | | | | X | X | X |
| (k) Pulmonology; | X | X | | | | X | X | |
| (l) Psychiatry or a plan for management of the psychiatric trauma patient. | X | X | | | | X | X | |
| (31) Ancillary services available for trauma patient care: | X | X | X | X | X | X | X | X |
| (a) Adult protective services; | X | X | X | X | X | | | |

| WAC 246-976-700 Trauma Service Standards | Adult Levels | | | | | Pediatric Levels | | |
|---|--------------|----|-----|----|---|------------------|------|-------|
| | I | II | III | IV | V | I P | II P | III P |
| A facility with a designated trauma service must have: | | | | | | | | |
| (b) Child protective services; | X | X | X | X | X | X | X | X |
| (c) Chemical dependency services; | X | X | X | | | X | X | X |
| (d) Nutritionist services; | X | X | X | X | | X | X | X |
| (e) Occupational therapy services; | X | X | X | | | X | X | X |
| (f) Pastoral or spiritual care; | X | X | X | X | X | X | X | X |
| (g) Pediatric therapeutic recreation/child life specialist; | | | | | | X | X | |
| (h) Pharmacy services, with an in-house pharmacist; | X | | | | | X | | |
| (i) Pharmacy services; | | X | X | X | X | | X | X |
| (j) Physical therapy services; | X | X | X | X | | X | X | X |
| (k) Psychological services; | X | X | X | | | X | X | X |
| (l) Social services; | X | X | X | X | | X | X | X |
| (m) Speech therapy services. | X | X | X | | | X | X | X |
| (32) A trauma care outreach program, including: (a) Telephone consultations with physicians of the community and outlying areas; (b) On-site consultations with physicians of the community and outlying areas. | X | X | | | | X | X | |
| (33) Injury prevention, including: | X | X | X | X | X | X | X | X |
| (a) A public injury prevention education program; | X | X | X | | | X | X | X |
| (b) Participation in community or regional injury prevention activities; | X | X | X | X | X | X | X | X |
| (c) A written plan for drug and alcohol screening and brief intervention and referral. | X | X | X | X | X | X | X | X |
| (34) A formal trauma education training program, for: | X | X | | | | X | X | |
| (a) Allied health care professional; | X | X | | | | X | X | |
| (b) Community physicians; | X | X | | | | X | X | |
| (c) Nurses; | X | X | | | | X | X | |
| (d) Prehospital personnel; | X | X | | | | X | X | |
| (e) Staff physicians. | X | X | | | | X | X | |
| (35) Provisions to allow for initial and maintenance training of invasive manipulative skills for prehospital personnel. | X | X | X | X | | X | X | X |
| (36) Residency programs: (a) Accredited by the Accreditation Council of Graduate Medical Education; (b) With a commitment to training physicians in trauma management. | X | | | | | X | | |
| (37) A trauma research program with research applicable to the adult and pediatric trauma patient population. | X | | | | | X | | |
| (38) For joint trauma service designation (when two or more hospitals apply to share a single trauma designation): (a) A single, joint multidisciplinary trauma quality improvement program in accordance with the trauma quality improvement standards defined in subsection (4) of this section; (b) A set of common policies and procedures adhered to by all hospitals and providers in the joint trauma service; (c) A predetermined, published hospital rotation schedule for trauma care. | X | X | X | | | X | X | X |

NEW SECTION

WAC 246-976-800 Trauma rehabilitation service standards.

| WAC 246-976-800 Trauma Rehabilitation Service Standards | Levels | | | |
|---|--------|----|-----|-------------|
| | I | II | III | I Pediatric |
| A designated trauma rehabilitation service must: | | | | |
| (1) Be a licensed hospital as defined in chapter 246-320 WAC. | X | | | X |
| (2) Treat adult and adolescent trauma patients in inpatient and outpatient settings regardless of disability or level of severity or complexity. | X | | | |
| (3) Treat pediatric and adolescent trauma patients in inpatient and outpatient settings regardless of disability or level of severity or complexity. | | | | X |
| (4) Treat adult and adolescent trauma patients in inpatient and outpatient settings with disabilities or level of severity or complexity within the facility's capability and as specified in the facility's admission criteria. | | X | | |
| (5) For adolescent patients (approximately twelve to eighteen years of age), the service must consider whether physical development, educational goals, preinjury learning or developmental status, social or family needs, and other factors indicate treatment in an adult or pediatric rehabilitation service. | X | X | | X |
| (6) Have and retain full accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) for inpatient medical rehabilitation programs. | X | X | | |
| (7) Have and retain full accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) for pediatric inpatient medical rehabilitation programs. | | | | X |
| (8) House patients on a designated rehabilitation nursing unit. | X | X | | |
| (9) House patients in a designated pediatric rehabilitation area, providing an environment appropriate to the age and developmental status of the patient. | | | | X |
| (10) Provide a peer group for persons with similar disabilities. | X | X | | X |
| (11) Have a medical director who: | X | X | | X |
| (a) Is a physiatrist; | | | | |
| (b) Is responsible for the organization and direction of the trauma rehabilitation service; and | | | | |
| (c) Participates in the trauma rehabilitation service's quality improvement program. | | | | |
| (12) Have a physiatrist in-house or on-call twenty-four hours every day and responsible for the day-to-day clinical management and the treatment plan of trauma patients. | X | X | | X |
| (13) Provide rehabilitation nursing personnel twenty-four hours every day, with: | X | X | | X |
| (a) Management and supervision by a registered nurse; | X | X | | X |
| (b) The initial care plan and weekly update reviewed and approved by a certified rehabilitation registered nurse (CRRN); | X | X | | X |
| (c) An orientation and training program for all levels of rehabilitation nursing personnel; | X | X | | X |
| (d) A minimum of six clinical nursing care hours, per patient day, for each trauma patient; | X | X | | X |
| (e) At least one CRRN on duty, each day and evening shift, when a trauma patient is present; | X | | | X |
| (f) At least one CRRN on duty, one shift each day, when a trauma patient is present. | | X | | |
| (14) Provide the following trauma rehabilitation services with providers who are licensed, registered, certified, or degreed and are available to provide treatment as defined in the patient's rehabilitation plan: | X | X | | X |
| (a) Occupational therapy; | X | X | | X |
| (b) Physical therapy; | X | X | | X |
| (c) Speech/language pathology; | X | X | | X |
| (d) Social services; | X | X | | X |
| (e) Nutritional counseling; | X | X | | X |
| (f) Clinical psychological services, including testing and counseling; | X | X | | X |

| WAC 246-976-800 Trauma Rehabilitation Service Standards | Levels | | | |
|---|--------|----|-----|-------------|
| | I | II | III | I Pediatric |
| A designated trauma rehabilitation service must: | | | | |
| (g) Neuropsychological services. | X | X | | X |
| (15) Provide the following health personnel and consultative services in-house or on-call twenty-four hours every day: | X | X | | X |
| (a) A pharmacist with immediate access to pharmaceuticals and patient medical records and pharmacy data bases; | X | X | | X |
| (b) Respiratory care practitioners; | X | X | | X |
| (c) Pastoral or spiritual care; | X | X | | X |
| (d) A radiologist; | X | X | | X |
| (e) A pediatrician. | | | | X |
| (16) Provide the following services in-house or through affiliation or consultative arrangements with providers who are licensed, registered, certified, or degreed: | X | X | | X |
| (a) Anesthesiology (anesthesiologist or CRNA); | X | X | | X |
| (b) Audiology; | X | X | | X |
| (c) Communication augmentation; | X | X | | X |
| (d) Dentistry; | X | X | | X |
| (e) Diagnostic imaging, including: (i) Computerized tomography; (ii) Magnetic resonance imaging; (iii) Nuclear medicine; and (iv) Radiology; | X | X | | X |
| (f) Driver evaluation and training; | X | X | | |
| (g) Educational program appropriate to the disability and developmental level of the pediatric or adolescent patient, to include educational screening, instruction, and discharge planning coordinated with the receiving school district; | X | X | | X |
| (h) Electrophysiologic testing, including: (i) Electroencephalography; (ii) Electromyography; and (iii) Evoked potentials; | X | X | | X |
| (i) Laboratory services; | X | X | | X |
| (j) Orthotics; | X | X | | X |
| (k) Prosthetics; | X | X | | X |
| (l) Pediatric therapeutic recreation specialist or child life specialist; | | | | X |
| (m) Rehabilitation engineering for device development and adaptations; | X | X | | X |
| (n) Substance abuse counseling; | X | X | | X |
| (o) Therapeutic recreation; | X | X | | X |
| (p) Vocational rehabilitation; | X | X | | |
| (q) Urodynamic testing. | X | X | | X |
| (17) Have providers with documented special competence in pediatric rehabilitation care. This requirement applies to all pediatric trauma rehabilitation providers. | | | | X |
| (18) Serve as a regional referral center for patients in their geographical area needing only level II or III rehabilitation care. | X | | | |
| (19) Have an outreach program regarding trauma rehabilitation care, consisting of telephone and on-site consultations with physicians and other health care professionals in the community and outlying areas. | X | X | | X |
| (20) Have a formal program of continuing trauma rehabilitation care education, both in-house and outreach, provided for nurses and allied health care professionals. | X | X | | X |

| WAC 246-976-800 Trauma Rehabilitation Service Standards | Levels | | | |
|---|--------|----|-----|-------------|
| | I | II | III | I Pediatric |
| A designated trauma rehabilitation service must: | | | | |
| (21) Have an ongoing structured program to conduct clinical studies, applied research, or analysis in rehabilitation of trauma patients, and report results within a peer review process. | X | | | X |
| (22) Have a quality improvement program that reflects and demonstrates a process for continuous quality improvement in the delivery of trauma rehabilitation care, with: (a) An organizational structure and plan that facilitates the process of quality improvement and identifies the authority to change policies, procedures, and protocols that address the care of the trauma patient; (b) Representation and participation by the interdisciplinary trauma rehabilitation team; (c) A process for communicating and coordinating with referring trauma care providers as needed; (d) Development of outcome standards; (e) A process for monitoring compliance with or adherence to the outcome standards; (f) A process of internal peer review to evaluate specific cases or problems; (g) A process for implementing corrective action to address problems or deficiencies; (h) A process to analyze and evaluate the effect of corrective action; and (i) A process to ensure that confidentiality of patient and provider information is maintained according to the standards of RCW 70.41.200 and 70.168.090. | X | X | | X |
| (23) Participate in the regional trauma quality improvement program as defined in WAC 246-976-910. | X | X | X | X |
| (24) Participate in the Washington state trauma registry as defined in WAC 246-976-430. | X | X | X | X |
| (25) Provide a community based program of coordinated and integrated outpatient trauma rehabilitation services, evaluation, and treatment to persons with trauma-related functional limitations who do not need or no longer require comprehensive inpatient rehabilitation. Services may be provided in, but not limited to, the following settings: (a) Freestanding outpatient rehabilitation centers; (b) Organized outpatient rehabilitation programs in acute hospital settings; (c) Day hospital programs; (d) Other community settings. | | | X | |
| (26) Treat patients according to admission criteria based on diagnosis and severity. | | | X | |
| (27) Be directed by a physician with training and experience necessary to provide rehabilitative physician services, acquired through one of the following: (a) Formal residency in physical medicine and rehabilitation; or (b) A fellowship in rehabilitation for a minimum of one year; or (c) A minimum of two years' experience in providing rehabilitation services for patients typically seen in CARF-accredited inpatient rehabilitation programs. | | | X | |
| (28) Provide the following trauma rehabilitation services with providers who are licensed, registered, or certified according to the frequency as defined in the rehabilitation plan: (a) Occupational therapy; (b) Physical therapy; (c) Social services; (d) Speech/language pathology. | | | X | |
| (29) Provide or assist the patient to obtain the following as defined in the rehabilitation plan: (a) Audiology; (b) Dentistry; (c) Driver evaluation and training; | | | X | |

| WAC 246-976-800 Trauma Rehabilitation Service Standards | Levels | | | |
|--|--------|----|-----|-------------|
| A designated trauma rehabilitation service must: | I | II | III | I Pediatric |
| (d) Education; (e) Nursing; (f) Nutrition counseling; (g) Orthotics; (h) Pastoral or spiritual care; (i) Prosthetics; (j) Psychology; (k) Rehabilitation engineering for device development and adaptations; (l) Respiratory therapy; (m) Substance abuse counseling; (n) Therapeutic recreation; (o) Vocational rehabilitation. | | | | |
| (30) Have a quality improvement program that reflects and demonstrates a process for continuous quality improvement in the delivery of trauma care, with: (a) A process to identify and monitor trauma rehabilitation care and outcome standards and indicators; (b) An interdisciplinary team, to include the trauma rehabilitation service physician director; (c) A process to ensure confidentiality of patient and provider information in accordance with RCW 70.41.200 and 70.168.090. | | | X | |

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | | | |
|-----------------|--|-----------------|--|
| WAC 246-976-485 | Designation of facilities to provide trauma care services. | WAC 246-976-760 | Pediatric trauma service designation—Outreach, public education, provider education, and research. |
| WAC 246-976-490 | Suspension or revocation of designation. | WAC 246-976-830 | Designation standards for facilities providing level I trauma rehabilitation service. |
| WAC 246-976-530 | Trauma service designation—Administration and organization. | WAC 246-976-840 | Designation standards for facilities providing level II trauma rehabilitation service. |
| WAC 246-976-535 | Trauma service designation—Basic resources and capabilities. | WAC 246-976-850 | Designation standards for level III trauma rehabilitation service. |
| WAC 246-976-540 | Trauma service designation—Outreach, public education, provider education, and research. | WAC 246-976-860 | Designation standards for facilities providing level I pediatric trauma rehabilitation service. |
| WAC 246-976-620 | Equipment standards for trauma service designation. | WAC 246-976-870 | Trauma team activation. |
| WAC 246-976-750 | Pediatric trauma service designation—Administration and organization. | WAC 246-976-881 | Trauma quality improvement programs for designated trauma care services. |
| WAC 246-976-755 | Pediatric trauma service designation—Basic resources and capabilities. | WAC 246-976-885 | Educational requirements—Designated trauma care service personnel. |
| | | WAC 246-976-886 | Pediatric education requirements (PER) for nonpediatric designated facilities. |

WAC 246-976-887

Pediatric education requirements (PER) for pediatric designated facilities.

WSR 09-23-100
PERMANENT RULES
HEALTH CARE AUTHORITY
 (Community Health Services)

[Order 09-03—Filed November 17, 2009, 9:52 a.m., effective December 18, 2009]

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

Purpose: The rules will allow community health services, under the direction of the administrator of the health care authority, to administer the community health care collaborative program, define eligibility requirements and set parameters for the allocation of grant funding.

The 2009 Washington state legislature created the community health care collaborative grant program and appropriated funds in the 2009-11 biennium to Washington state health care authority for the implementation of this program. The proposed rules set the parameters to administer the program.

Citation of Existing Rules Affected by this Order: Amending WAC 182-20-600, 182-20-610, and 182-20-620.

Statutory Authority for Adoption: RCW 41.05.220 and 41.05.230.

Adopted under notice filed as WSR 09-20-057 on October 2, 2009.

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 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 3, Repealed 0.

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

Date Adopted: November 17, 2009.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-07, filed 12/28/06, effective 1/28/07)

WAC 182-20-600 Community health care collaborative program. ~~((The community health care collaborative grant program was established July 1, 2006, to develop innovative health care delivery models. The funding covers a two-year cycle; half of the award to be distributed throughout the first year and the final half distributed throughout the second year upon evidence of successful program progress and~~

~~achieving grant objectives, based upon available funding.))~~
The purpose of this chapter is to establish procedures for the community health care collaborative grant program. The authority is responsible for disbursing funds to further the efforts of community-based organizations that address:

- (1) Access to medical treatment;
- (2) Efficient use of health care resources; or
- (3) Improve quality of care.

The program is a two-year grant. The continuation of disbursement of funds for the second year of the grant is determined upon recipients' satisfactory performance measures reported for the first year.

The authority may also subcontract administrative activities with a statewide community health care organization that can facilitate program policy regarding best practices and standardized performance measures among grantees.

AMENDATORY SECTION (Amending Order 06-07, filed 12/28/06, effective 1/28/07)

WAC 182-20-610 Administration. The authority is responsible for:

- (1) ~~((Preaward))~~ Grant development~~((:))~~, including:
 - (a) ~~((Develop))~~ Setting criteria for the selection of community-based organizations to receive grant funding;
 - (b) ~~((Develop))~~ Determining equitable standards governing the granting of awards;
 - (c) ~~((Determine))~~ Determining nature and format of the application and process.
- (2) Award determinations~~((:))~~, including:
 - (a) ~~((Consult with representatives, appointed by the secretary of the department of health, the assistant secretary of health and recovery services administration within the department of social and health services, and the office of the insurance commissioner to make recommendations for final applicant selection and grant determination))~~ Accepting grant applications:
 - (b) Selecting recipients based upon documented health care access and quality improvement goals aligned with state health priorities;
 - ~~((b) The administrator will review recommendations)~~ ~~((c) Reviewing and ((make))~~ making final determination based upon ~~((recommendations, funds available and utilization of resources to meet the goals of the program;~~
 - (e) ~~Conduct~~) the applicant's ability to:
 - (i) Meet the eligibility criteria;
 - (ii) Meet the program goals; and
 - (iii) Best utilize funds and resources available to meet the goals of the program;
 - (d) Conducting on-site visits to ensure applicant's ability to achieve grant objectives and performance measures identified in the application;
 - ~~((d) Contract)~~ (e) Contracting with successful applicants; and
 - ~~((e) Disburse))~~ (f) Disbursing grant funds according to program policy.
 - (3) Post-award actions~~((:))~~, including:
 - (a) ~~((Review))~~ Reviewing periodic progress reports from contractors;

~~(b) ((Conduct))~~ Conducting on-site visits of contractors to provide assistance and ensure compliance of grant objectives as necessary;

~~(c) ((Consult with representatives from department of health, the assistant secretary of health and recovery services administration within the department of social and health services, and office of the insurance commissioner, one year following initial disbursement, to make recommendations to administrator for disbursement of the second half of grant funds, based upon performance measures identified in the application and evidence of successful program progress and achieving grant objectives))~~ Reviewing and approving distribution of the second half of a grant based upon satisfactory performance reports; and

~~(d) ((The administrator will review and make final determination for grant disbursements; and~~

~~(e) Compile a report to the governor and legislature on July 1, 2008, which))~~ Compiling periodic reports as requested by the governor and legislature, which may include:

(i) ~~((Describes))~~ Description of organizations and programs funded;

(ii) ~~((Describes))~~ Description and ~~((analyzes))~~ analysis of results achieved;

(iii) ~~((Makes))~~ Recommendations for improvements to the program; and

(iv) Highlights best practices that can be replicated statewide.

AMENDATORY SECTION (Amending Order 06-07, filed 12/28/06, effective 1/28/07)

WAC 182-20-620 Application process. (1) Eligibility.

(a) Applicants must ~~((provide the following in))~~ meet the application ~~((format))~~ requirements prescribed by the authority.

(b) Applicants must be able to show:

(i) Evidence of private, nonprofit, tax exempt status incorporated in Washington state or public agency status under the jurisdiction of a local, county, or tribal government;

(ii) Evidence of the specific geographic region served ~~((and))~~;

(iii) Evidence of a formal collaborative ~~((governing))~~ governance structure ~~((by documentation that may include, but is not limited to:~~

~~(A) Bylaws;~~

~~(B) Agreements;~~

~~(C) Contracts;~~

~~(D) Memorandum of understanding;~~

~~(E) Minutes;~~

~~(F) Letters; or~~

~~(G) Other communications))~~ and decision-making process that demonstrates structure, operation, and accountability to the region served;

~~((iii))~~ (iv) Evidence of representation from hospitals, public health, behavioral health, community health centers, rural health clinics, and private practitioners that serve low-income persons in the region, unless there are no such providers within the region, or providers decline or refuse to participate or place unreasonable conditions on their participation;

~~((iv))~~ (v) Amount of funds requested and how the dollars will be spent;

~~((iv))~~ (vi) Data to evaluate program progress and ability to meet grant objectives.

~~((b))~~ (c) Applicants will be evaluated competitively on their ability to:

(i) Address documented health care access and quality improvement goals aligned with state policy priorities and health care needs in the specific region served;

(ii) ~~((Engage))~~ Document engagement of key community members;

(iii) ~~((Show))~~ Document evidence of matching funds of at least two dollars for each grant dollar requested. All matching fund contributions ~~((, including cash and in kind, shall))~~ must meet the criteria determined by the administrator and ~~((included in))~~ the application guidelines;

(iv) ~~((Ability to meet the documented health care needs and))~~ Address how the grant will enhance long-term capacity and sustainability of programs;

(v) Show innovation in program approaches that could be replicated throughout the state;

(vi) Make efficient and cost-effective use of funds by simplifying administration affecting the health care delivery system;

(vii) Clearly describe size of organization, program objectives, and populations served ~~((, and~~

~~((viii) Meet the reporting requirements of the authority))~~.

~~((e))~~ (d) Application access.

(i) The call for grant applications will be made by posting the announcement to the authority's official web site and by notification sent to interested parties.

(ii) To be placed on the interested parties' distribution list, send contact information, including mailing and e-mail addresses to community health care collaboration at Washington State Health Care Authority, P.O. Box 42721, Olympia, Washington 98504-2721.

(2) The guidelines and application forms will be available on the authority's official web site and included with the published guidelines distributed by e-mail to those who request an application. The application will be available in hard copy and sent by United States mail upon request. Applications must be completed and submitted in the format and filed by the deadlines prescribed by the authority and published in the guidelines.

WSR 09-23-102

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 09-02—Filed November 17, 2009, 10:44 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The main purpose of this rule making is to amend public employees benefits board (PEBB) rules in Title 182 WAC and adopt new rules to:

1. Implement provisions of ESHB 2245 affecting employee eligibility.

2. Implement PEBB policy clarifying dependent eligibility and enrollment requirements.
3. Amend rules to align with federal laws, including Michelle's law and the various economic stimulus bills.
4. Implement state legislation.
5. Allow members sufficient time following the birth or adoption of a child to provide information necessary for the health care authority (HCA) to provide health care coverage to newborn and newly adopted children back to the date of birth.
6. Define eligibility criteria for domestic partners.
7. Clarify language regarding special open enrollment events.
8. Clarify options for continuing coverage for employees when they are no longer eligible for PEBB insurance coverage paid for by their employer.

In addition to these specific subject areas, HCA conducted a full review of PEBB rules in these chapters, made necessary technical corrections, and made necessary amendments that effectuate legislative action and PEBB policy.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-12-112, 182-12-115 and 182-12-121; and amending WAC 182-08-115, 182-08-120, 182-08-180, 182-08-190, 182-08-196, 182-08-197, 182-08-198, 182-08-199, 182-08-200, 182-08-230, 182-12-109, 182-12-111, 182-12-116, 182-12-123, 182-12-128, 182-12-131, 182-12-133, 182-12-136, 182-12-138, 182-12-141, 182-12-146, 182-12-148, 182-12-171, 182-12-175, 182-12-200, 182-12-205, 182-12-207, 182-12-208, 182-12-209, 182-12-211, 182-12-250, 182-12-260, 182-12-262, 182-12-265, 182-12-270, 182-16-020, 182-16-030, 182-16-032, 182-16-034, 182-16-036, and 182-16-037.

Statutory Authority for Adoption: RCW 41.05.160.

Adopted under notice filed as WSR 09-20-056 on October 2, 2009.

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Date Adopted: November 17, 2009.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114(2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, ~~((blind vendors;))~~ counties, municipalities, political subdivisions, ~~((and))~~ tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff" means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the ~~((employer))~~ employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the ~~((employer))~~ employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a ~~((dependent's enrollment))~~ dependent may be ~~((waived))~~ removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB ~~((benefits services))~~ program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB ~~((benefits services))~~ program within the HCA.

"PEBB ~~((benefits services))~~ program" means the program within the ~~((health care authority))~~ HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC ~~((182-12-115))~~ 182-12-114), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group

health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" ~~((or "insured"))~~ means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment ~~((or postpone enrollment))~~ in a PEBB health plan ~~((by an))~~ because the employee ~~((as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260))~~ is enrolled in other comprehensive group coverage or is on approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-120 Employer contribution. The employers' contribution must be used to provide insurance coverage for the basic life insurance benefit, ~~((a))~~ the basic long-term disability benefit, medical, and dental, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-180 Premium payments and refunds. PEBB premiums ~~((payments))~~ for retiree, COBRA or ~~((an extension of))~~ PEBB ~~((insurance))~~ continuation coverage begin to accrue the first of the month of PEBB insurance coverage.

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss

of eligibility of the enrollee except when eligible for life insurance conversion.

PEBB premiums will be refunded using the following method:

(1) When ~~((a))~~ any PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer ~~((a))~~ an eligible dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or employing agency except as indicated in WAC 182-12-148~~((3))~~ (4).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the PEBB appeals committee; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the ~~((employer))~~ employing agency or subscriber to the HCA. Upon request of an ~~((employer))~~ employing agency, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the ~~((employer))~~ employing agency or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the employing agency, subscriber, or beneficiary, as appropriate.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-190 The employer contribution is set by the HCA and paid to the HCA for all eligible employees. ~~((Every department, division, or agency of state government, and such county, municipal or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, K-12 school district or educational service district that are covered under PEBB insurance coverage,))~~ State agencies and employer groups that participate in the PEBB program under contract with the HCA must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions ~~((are))~~ for state agencies set by the HCA ~~((and))~~ are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each ~~((eligible))~~ employee ~~((in pay status eight or more hours during a calendar month))~~ of a state agency eligible under WAC 182-12-131 or each eligible employee of a

state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical is waived.

~~((4))~~ ~~((PEBB insurance coverage for any county, municipality or other political subdivision, tribal government, or an agency or instrumentality of a tribal government, or any K-12 school district or educational service district may be canceled by HCA if the premium contributions are delinquent more than ninety days))~~ Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution. The entire employer contribution is due and payable to the HCA even if medical is waived.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC ~~((482-12-115))~~ 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-196 What happens if my health plan becomes unavailable? Employees ~~((and))~~ retirees and survivors, and enrollees in PEBB continuation coverage for whom the chosen health plan becomes unavailable due to a change in contracting service area~~((;))~~ or the retiree's entitlement to medicare must select a new health plan within sixty days after notification by the PEBB ~~((benefits services))~~ program.

(1) Employees who fail to select a new medical or dental plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan ~~((Preferred Provider Organization))~~ the Uniform Dental Plan, or a plan selected by the administrator, along with the employee's existing dependent enrollment.

(2) Retirees and survivors eligible under WAC 182-12-250 or 182-12-265 who fail to select a new health plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan ~~((Preferred Provider Organization))~~ and the Uniform Dental Plan ~~((-However, retirees enrolled in medicare Parts A and B, and who enroll in medicare Part D may be assigned to a PEBB medicare plan that does not include a pharmacy benefit))~~ , or a plan selected by the administrator.

Any subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as allowed in WAC 182-08-198.

(3) Enrollees ~~((continuing))~~ in PEBB ~~((health plan enrollment))~~ continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, or 182-12-270(2) must select a new health plan no later than sixty days after notification by the PEBB ~~((benefits services))~~ pro-

gram ~~((or their))~~. If enrollees fail to select a new health plan ~~((enrollment))~~ within sixty days of the notification, health plan coverage will end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-197 When must newly eligible employees ~~((must))~~ select PEBB benefits and complete enrollment forms ~~((within thirty one days of the date they become eligible for PEBB benefits))~~? (1) Employees who are newly eligible for PEBB benefits must complete the appropriate forms indicating enrollment and their health plan choice, or their decision to waive medical under WAC 182-12-128. Employees must return the forms to their employing agency no later than thirty-one days after they become eligible for PEBB benefits ~~((, as stated in))~~ under WAC ~~((482-12-115))~~ 182-12-114. Newly eligible employees who do not return an enrollment form to their employing agency indicating their medical and dental choice within thirty-one days will be enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan ~~((Preferred Provider Organization))~~; and

(b) Dental enrollment (if the ~~((employing agency))~~ employer group participates in PEBB dental) will be Uniform Dental Plan.

(2) Employees who are newly eligible ~~((employees))~~ may enroll in optional insurance coverage (except for employees of ~~((agencies))~~ employer groups that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will be automatically enrolled in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their employing agency no later than thirty-one days after they become eligible for PEBB benefits.

(4) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical

FSA or DCAP or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their employing agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(5) ~~((When an employee's employment ends,))~~ The employer contribution toward insurance coverage ends ~~((according to WAC 182-12-131((+)))~~. Employees who ~~((are later reemployed and))~~ become newly eligible for ~~((PEBB benefits))~~ the employer contribution enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one employing agency to another employing agency without a break in state service. This includes movement of employees between any ~~((agencies))~~ entities described ~~((as eligible groups))~~ in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution ~~((based enrollment in))~~ toward PEBB insurance coverage.

(c) When employees continue insurance coverage by self-paying the full premium under WAC 182-12-133(1) or ~~((2))~~ 182-12-142 and ~~((are reemployed into a benefits eligible position))~~ become newly eligible for the employer contribution before the end of the maximum number of months allowed for continuing PEBB health plan enrollment under those rules. Employees who are eligible to continue optional life or optional long-term disability under continuation coverage but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to ~~((employment))~~ work or become eligible again for the employer contribution.

(6) When an employee's employment ends, participation in the state's salary reduction plan ends. If the employee is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the appropriate enrollment forms to change health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both. To make a health plan change, the sub-

subscriber must submit the appropriate enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers, including retirees, COBRA, and other self-pay subscribers, submit the enrollment forms to the PEBB ~~((benefits services))~~ program. ~~((Enrollment))~~ Insurance coverage in the new health plan will begin the first day of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of the month, ~~((enrollment))~~ insurance coverage will begin on that date. If the special open enrollment is due to the birth ~~((or))~~, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, ~~((enrollment))~~ insurance coverage will begin the month in which the event occurs. The following events create a special open enrollment:

(a) Subscriber acquires a new eligible dependent through marriage, registering a domestic partnership with Washington state, birth, adoption or ~~((placement for adoption))~~ when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption, legal custody or legal guardianship;

(b) Subscriber's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;

(e) Subscriber or a dependent loses comprehensive group health coverage;

(f) Subscriber or a dependent has a change in employment status that affects the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage~~((-))~~;

(g) Subscriber or a dependent has a change in residence that affects health plan availability, benefits, or cost of insurance coverage. If the subscriber moves and the subscriber's current health plan is not available in the new location but the subscriber does not select a new health plan, the PEBB ~~((benefits services))~~ program may enroll the subscriber in the Uniform Medical Plan ~~((Preferred Provider Organization))~~ or Uniform Dental Plan~~((-))~~;

(h) Subscriber receives a court order or medical support order requiring the subscriber, the subscriber's spouse, or the subscriber's ~~((qualified))~~ Washington state registered domestic partner to provide insurance coverage for an eligible dependent~~((-))~~;

(i) Subscriber ~~((receives formal notice that))~~ or a dependent becomes eligible for a medical assistance program under the department of social and health services ~~((has determined it is more cost-effective to enroll the eligible subscriber or eligible dependent in PEBB medical than))~~, including medicaid or the children's health insurance program (CHIP), or the subscriber or a dependent loses eligibility in such a medical assistance program~~((-))~~;

(j) A dependent dies;

(k) Seasonal employees whose off-season occurs during the annual open enrollment. They may select a new health plan upon their return to work~~((-))~~;

~~((k))~~ Subscriber enrolls in PEBB retiree insurance coverage;

(l) Subscriber or an eligible dependent becomes entitled to medicare, enrolls in or disenrolls from a medicare Part D plan~~((-))~~;

(m) Subscriber experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health plan if the subscriber's or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB ~~((appeals manager))~~ program determines that a continuity of care issue exists. The PEBB ~~((appeals manager will use))~~ program criteria ~~((that))~~ used will include, but ~~((are))~~ is not limited to, the following in determining if a continuity of care issue exists:

(i) Active cancer treatment; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-199 When may an employee enroll in or change their election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? (1) When they are newly eligible under WAC 182-12-114, as described in WAC 182-08-197.

(2) During annual open enrollment: An eligible employee may enroll in or change their election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. Employees must submit, in paper or on-line, the appropriate enrollment form ~~((or complete the appropriate on-line enrollment process,))~~ to reenroll no later than the end of the annual open enrollment. The enrollment or new election will begin January 1st of the following year.

~~((2))~~ **(3) During a special open enrollment:** Employees may enroll or change their election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment. To make a change or enroll, the employee must submit the appropriate forms as instructed on the forms no later than sixty days after the event occurs. Enrollment will begin the first day of the month following approval by the ~~((plan))~~ administrator. For purposes of this section, an eligible dependent includes the employee's opposite sex spouse and any other person who qualifies as the employee's dependent under Section 152 of the IRC without regard to the income

limitations of that section. It does not include a Washington state registered domestic partner (~~((who is the same sex as the subscriber))~~) unless the domestic partner otherwise qualifies as a dependent under Section 152 of the IRC. The following changes are events that create a special open enrollment for purposes of an eligible employee making a change:

- (a) Employee acquires a new eligible dependent;
- (b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;
- (c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;
- (d) Employee has a change in marital status, including legal separation documented by a court order;
- (e) Employee or a dependent has a change in employment status that affects the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage under a plan provided by the employee's employer or the dependent's employer;
- (f) Employee's or a dependent's residence changes that affects health plan availability, level of benefits, or cost of insurance coverage;
- (g) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;
- (h) Employee (~~((receives formal notice that))~~) or dependent becomes eligible for a medical assistance program under the department of social and health services (~~((has determined it is more cost-effective to enroll the eligible employee or eligible dependent in PEBB medical than in))~~), including medicaid or the children's health insurance program (CHIP), or the subscriber or dependent loses eligibility in such a medical assistance program;
- (i) Seasonal employees whose off-season occurs during the annual open enrollment may enroll in the plan upon their return to work;
- (j) Employee or an eligible dependent gains or loses eligibility for medicare or medicaid;
- (k) The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(l) In addition to (a) through (k) of this section, the following are events that create a special open enrollment for purposes of an eligible employee making a change in his or her DCAP:

- (i) Employees who change dependent care providers may make a change in their DCAP to reflect the cost of the new provider;
- ~~((H))~~ (ii) If an employee's dependent care provider imposes a change in the cost of dependent care, the employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC;

~~((m))~~ The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1)).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment or for faculty employed by more than one institution of higher education? Employing agencies responsible for paying the employer contribution:

(1) For eligible employees changing agencies: When an eligible employee's employment (~~((eases))~~) relationship terminates with an employing agency at any time before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency would not be liable for any employer contribution for that eligible employee until the month following the transfer.

(2) For eligible faculty employed by more than one institution of higher education:

(a) When a faculty is eligible for the employer contribution during an anticipated work period (quarter, semester or instructional year), under WAC 182-12-131(3), one institution will pay the entire cost of the employer contribution if the employee would be eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions during the anticipated work period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

(b) When a faculty is eligible for the employer contribution during the summer or off-quarter/semester, under WAC 182-12-131 (3)(c), one institution will pay the entire cost of the employer contribution if the employee would be eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions throughout the instructional year or equivalent nine-month period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

(c) When a faculty is eligible through two-year averaging under WAC 182-12-131 (3)(d) for the employer contribution, one institution will pay the entire cost of the employer contribution if the employee would be eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes to coverage based on its percentage of the employee's total work at all institutions throughout the preceding two academic years. This division of the employer contribution begins the summer quarter or semester following the second academic year and continues through that academic year or until eligibility under two-year averaging ceases.

Note: "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters, in that order.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-08-230 Participation in PEBB benefits by employer groups, including K-12 school districts and educational service districts. This section applies to all employer groups (~~(, K-12 school districts and educational service districts participating in PEBB insurance coverage)) as defined in WAC 182-08-015.~~

(1)~~((a))~~ Each employer group ~~((must))~~ determines ~~((an employee's))~~ employee and dependent eligibility for PEBB insurance coverage in accordance with the ~~((applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.~~

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage must submit required documentation and meet all participation requirements in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

(2) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage must sign an agreement with the HCA.

(3) At least twenty days before the premium due date, the HCA will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status must be submitted to the HCA before the twentieth day of the month when the change occurs. Changes submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late must be accompanied by a full explanation of the circumstances of the late notification.

(4) An employer group, K-12 school district or educational service district must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

(5) Each employer group, K-12 school district or educational service district must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

(6) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational

service district to disenrollment and termination of each employee of the group.

(a) Before termination for nonpayment of premium, the HCA will send a notice of overdue premium to the employer group, K-12 school district or educational service district which notice will provide a one month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium have the right to a dispute resolution hearing in accordance with the terms of the agreement.

(e) Employees canceled due to the nonpayment of premium by the employer group, K-12 school district or educational service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

(7) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

(8) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.) criteria outlined in its contract with HCA.

(2) Each employer group is responsible for premium payments and billing arrangements in accordance with the criteria outlined in its contract with HCA.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114(2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contract as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

~~("Employer group" means those employee organizations representing state civil service employees, blind vendors, counties, municipalities, political subdivisions, and tribal governments participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.)~~

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under

the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff" means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the ~~((employer))~~ employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the ~~((employer))~~ employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a ~~((dependent's enrollment))~~ dependent may be ~~((waived))~~ removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB ~~((benefits services))~~ program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB ~~((benefits services))~~ program within HCA.

"PEBB ~~((benefits services))~~ program" means the program within the ~~((health care authority))~~ HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC ~~((182-12-115))~~ 182-12-114), eligible retired and disabled employees (as defined in WAC

182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" (~~(or "insured")~~) means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment ((or postpone enrollment)) in a PEBB health plan ((by an)) because the employee ((as defined in WAC 182-12-115) or a dependent who meets eligibility requirements in WAC 182-12-260) is enrolled in other comprehensive group coverage or is on approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-111 Eligible entities and individuals.

The following entities and individuals shall be eligible for PEBB insurance coverage subject to the terms and conditions set forth below:

(1) State agencies. (~~(Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is)) State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.~~

(a) Employees of technical colleges previously enrolled in a benefits trust may end PEBB benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to end PEBB benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may end PEBB benefit participation only as an entire bargaining unit. All administrative or managerial employees may end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) (~~(Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for purchasing insurance benefits,)) Employer groups: Employer groups may participate in PEBB insurance coverages at the option of each ((employee organization)) employer group provided all of the following requirements are met:~~

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit with the following exceptions:

- Bargaining units may elect to participate separately from the whole group; and
- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The (~~(legislative authority or the board of directors of the entity)) employer group must submit to the HCA an application ((together with employee census data and, if available, prior claims experience of the entity)) when it first applies, the contents of which will be specified by HCA. The application ((for PEBB insurance coverage)) for employer groups, with the exception of school districts and educational service districts, is subject to ((the)) review and approval ((of)) by the HCA, and the decision to approve or deny the application shall be provided to the applying employer group by the HCA.~~

(d) Each employer group purchasing PEBB insurance coverage must sign a contract with the HCA. The employer group must abide by the eligibility, enrollment, and payment terms specified in the contract. Any subsequent changes to the contract must be submitted for approval in advance of the change.

(e) The (~~(legislative authority or the board of directors)) employer group must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of a plan year.~~

(~~(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the~~

time of application for participation. Any substantive changes must be submitted to HCA.

~~(f)~~ The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as in WAC 182-12-260.

~~(g))~~ ~~(f)~~ The ~~((legislative authority or the board of directors))~~ employer group must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. With the exception of retired and disabled employees of school districts or educational service districts, if the ((employee organization)) employer group ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

~~((h))~~ ~~(g)~~ Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employer~~(s)~~ groups shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(3) School districts and educational service districts: In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district.

(b) Each participating school district or educational service district must agree to collect an employee premium by health plan and family size that is not less than that paid by state employees.

(c) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.-030.

(4) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

~~((4))~~ ~~Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:~~

~~(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit with the following exception:~~

~~• Bargaining units may elect to participate separately from the whole group; and~~

~~• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.~~

~~(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.~~

~~(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.~~

~~(d) The legislative authority or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.~~

~~(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.~~

~~(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.~~

~~(g) The legislative authority or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. If a county, municipality, or political subdivision ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.~~

~~(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.~~

~~(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance coverage provided all of the following requirements are met:~~

~~(a) All eligible employees of the K-12 school district or educational service district must transfer to PEBB insurance coverage as a unit with the following exceptions:~~

~~• Bargaining units may elect to participate separately from the whole group; and~~

~~Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.~~

~~(b) The school district or educational service district must submit an application together with an estimate of the number of employees and dependents to be enrolled. The application for the PEBB insurance coverage is subject to review for compliance with PEBB terms and conditions of participation.~~

~~(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.~~

~~(d) The school district or educational service district must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of the plan year.~~

~~(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or educational service district must agree to collect an employee premium by health plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.~~

~~(f) The eligibility requirements for dependents of K-12 school district and educational service district employees must be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.~~

~~(g) The school district or educational service district must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination, and may end participation only at the end of a plan year.~~

~~(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.~~

~~(6) Tribal governments: Employees of a tribal government, or an agency or instrumentality of a tribal government, may participate in PEBB insurance coverage provided all of the following requirements are met:~~

~~(a) All eligible employees of the entity must transfer to PEBB insurance as a unit with the following exceptions:~~

~~• Bargaining units may elect to participate separately from the whole group; and~~

~~• Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.~~

~~(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.~~

~~(e) The tribal council or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application for PEBB insurance coverage is subject to the approval of the HCA.~~

~~(d) The tribal council or the board of directors must maintain its PEBB insurance coverage participation at least one full year, and may terminate participation only at the end of the plan year.~~

~~(e) The terms and conditions for the payment of the insurance premiums must be in the provisions of a bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.~~

~~(f) The eligibility requirements for dependents of tribal government employees must be the same as the requirements for dependents of state employees and retirees in WAC 182-12-260.~~

~~(g) The tribal council or the board of directors must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. If a tribal government, or an agency or instrumentality of a tribal government, ends PEBB insurance coverage, retired and disabled employees are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.~~

~~(h) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employers shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.~~

~~(7)) (5) Eligible nonemployees:~~

~~(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.~~

~~(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.~~

~~(6) Individuals that are not eligible include:~~

~~(a) Adult family home providers as defined in RCW 70.128.010;~~

~~(b) Unpaid volunteers;~~

~~(c) Patients of state hospitals;~~

~~(d) Inmates;~~

~~(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;~~

~~(f) Students of institutions of higher education as determined by their institutions; and~~

~~(g) Any others not expressly defined as employees under RCW 41.05.011.~~

NEW SECTION

WAC 182-12-113 What are the obligations of a state agency in the application of employee eligibility? (1) All state agencies must carry out all actions, policies, and guidance issued by the PEBB program necessary for the operation of benefit plans, education of employees, claims administration, and appeals process including that described in chapters 182-08, 182-12, and 182-16 WAC. State agencies must:

(a) Use the methods provided by the PEBB program to determine eligibility and enrollment in benefits, unless otherwise approved in writing;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the PEBB program or otherwise as approved in writing by the PEBB program; and

(c) Carry out corrective action and pay any penalties imposed by the authority and established by the board when the state agency's eligibility determinations fail to comply with the criteria under these rules.

(2) All state agencies must determine employee eligibility for PEBB benefits and employer contribution according to the criteria in WAC 182-12-114 and 182-12-131. State agencies must:

(a) Notify newly hired employees of PEBB rules and guidance for eligibility and appeal rights;

(b) Provide written notice to faculty who are potentially eligible for benefits and employer contribution of their potential eligibility under WAC 182-12-114(3) and 182-12-131;

(c) Inform an employee in writing whether or not he or she is eligible for benefits upon employment. The written communication must include a description of any hours that are excluded in determining eligibility and information about the employee's right to appeal eligibility and enrollment decisions;

(d) Routinely monitor all employees' eligible work hours to establish eligibility and maintain the employer contribution toward insurance coverage;

(e) Make eligibility determinations based on the criteria of the eligibility category that most closely describes the employee's work circumstances per the PEBB program's direction;

(f) Identify when a previously ineligible employee becomes eligible or a previously eligible employee loses eligibility; and

(g) Inform an employee in writing whether or not he or she is eligible for benefits and the employer contribution whenever there is a change in work patterns such that the employee's eligibility status changes. At the same time, state agencies must inform employees of the right to appeal eligibility and enrollment decisions.

NEW SECTION

WAC 182-12-114 How do employees establish eligibility for PEBB benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the PEBB program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as provided in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situation in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB benefits begin.** PEBB benefits begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, PEBB benefits begin on that date.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month of the season. A

season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.

(b) Determining eligibility.

(i) Upon employment: A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) Upon revision of anticipated work pattern. If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) Based on work pattern. An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) Stacking of hours. As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions (or jobs) at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) When PEBB benefits begin. PEBB benefits begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, PEBB benefits begin on that date.

(3) Faculty are eligible as follows:

(a) Determining eligibility. "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) Upon employment: Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) For faculty hired on quarter/semester to quarter/semester basis: Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall may be considered consecutive quarters/semesters when first establishing eligibility.

(iii) Upon revision of anticipated work pattern: Faculty who receive additional workload after the beginning of

the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria of (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) Stacking. Faculty may establish eligibility and maintain the employer contribution toward insurance coverage by working as faculty for more than one institution of higher education. When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he or she works at more than one institution and may be eligible through stacking.

(c) PEBB benefits begin.

(i) PEBB benefits begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, PEBB benefits begin on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, PEBB benefits begin the first day of the month following the beginning of the second quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, PEBB benefits begin at the beginning of the second consecutive quarter/semester.

(4) Elected and full-time appointed officials of the legislative and executive branches of state government are eligible as follows:

(a) Eligibility. A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) PEBB benefits begin. PEBB benefits for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, PEBB benefits begin on that date.

(5) Justices and judges are eligible as follows:

(a) Eligibility. A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) PEBB benefits begin. PEBB benefits for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, PEBB benefits begin on that date.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-116 Who is eligible to participate in the state's salary reduction plan? (1) ~~((The following))~~ Employees of state agencies are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as defined in WAC ~~((182-12-115))~~ 182-12-114 and they elect to participate within the time frames described in WAC 182-08-197 or 182-08-199.

~~((a) Employees of public four-year institutions of higher education.~~

~~(b) Employees of the state community and technical colleges and of the state board for community and technical colleges.~~

~~(c) Employees of state agencies.)~~

(2) Employees of employer groups, ~~((K-12 school districts and educational service districts))~~ as defined in WAC 182-12-109, are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-123 Dual enrollment is prohibited. PEBB health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse ~~((or qualified)),~~ eligible Washington state registered domestic partner, or eligible parent as stated in WAC 182-12-128.

(3) Children eligible for medical and dental under two ~~((or more parents or stepparents, who are employed by PEBB participating employers,))~~ subscribers may be enrolled as a dependent under the health plan of only one ~~((parent or stepparent, but not more than one))~~ subscriber.

(4) An employee ~~((employed in a benefits eligible position by))~~ who is eligible for the employer contribution to PEBB benefits due to employment in more than one PEBB-participating ~~((employer))~~ employing agency may enroll only under one ~~((employer))~~ employing agency. The employee ~~((may))~~ must choose to enroll in PEBB benefits under ~~((the employer that:~~

~~(a) Offers the most favorable cost-sharing arrangement; or~~

~~(b) Employed the employee for the longer period of time))~~ only one employing agency.

Exception: Faculty who seek to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled according to WAC 182-08-200(2).

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-128 May an employee waive health plan enrollment? ~~((H))~~ Employees must enroll in dental, life and long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date

they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, ~~((medical is automatically waived for all))~~ the employee's eligible dependents may not be enrolled in medical, with the exception of adult dependents who may enroll in a health plan if the employee has waived medical coverage.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment ~~((period));~~

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate forms, the PEBB ~~((benefits services))~~ program may require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if one of these special open enrollment events occur. The change in enrollment must correspond to the event that creates the special open enrollment. The following changes are events that create a special open enrollment:

(a) Employee acquires a new eligible dependent through marriage, registering a domestic partnership with Washington state, birth, adoption or ~~((placement for))~~ when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption, legal custody or legal guardianship;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;

(e) Employee or a dependent loses comprehensive group insurance coverage;

(f) Employee or a dependent has a change in employment status that affects the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(g) Employee or a dependent has a change in place of residence that affects the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

(h) Employee receives a court order or medical support enforcement order requiring the employee, spouse, or qualified domestic partner to enroll an eligible dependent;

(i) Employee ~~((receives formal notice that))~~ or dependent becomes eligible for a medical assistance program under the department of social and health services ~~((has determined~~

it is more cost-effective to enroll)), including medicaid or the children's health insurance program (CHIP), or the employee or ((an-eligible)) dependent ((in PEBB medical than)) loses eligibility in a medical assistance program.

To ((change enrollment)) waive or enroll during a special open enrollment, the employee must submit the appropriate forms to their employing agency no later than sixty days after the event that creates the special open enrollment.

Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the month in which the event occurs.

NEW SECTION

WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff? This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as defined in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain his or her eligibility for the employer contribution toward insurance coverage for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

- Be hired into a position with a state agency within twenty-four months of the original eligible position ending; and
- Upon hire, notify the employing agency that he or she is potentially eligible to use this section.

This section ceases to apply if the employee is employed in a position eligible for PEBB benefits under WAC 182-12-114 within twenty-four months of leaving the original position.

After the twenty-fourth month, the employee must reestablish eligibility under WAC 182-12-114.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-131 ((When does)) How do eligible employees maintain the employer ((paid)) contribution toward insurance coverage ((end))? The employer contribution toward insurance coverage begins on the day that PEBB benefits begin under WAC 182-12-114. This section describes under what circumstances an employee maintains eligibility for the employer contribution toward PEBB benefits.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3) and (4) of this section, an employee who has established eligibility for benefits under WAC 182-12-114 is eligible for the employer contribution

each month in which he or she is in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - benefits-eligible seasonal employees.**

(a) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. The employer contribution toward PEBB benefits for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(3) **Maintaining the employer contribution - eligible faculty.**

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which the employee works half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to PEBB benefits. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty with gaps of eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) Maintaining the employer contribution - employees on leave and under the special circumstances listed below.

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) Maintaining the employer contribution - employees who move from an eligible to an otherwise ineligible position due to a layoff maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) Employees who are in pay status less than eight hours in a month. Unless otherwise indicated in this rule, when there is a month in which an employee is not in pay status for at least eight hours, the employee:

(a) Loses eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) The employer contribution to PEBB insurance coverage ends in any one of these circumstances for all employees:

(a) When the employee fails to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When the employee moves to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB medical, dental and life insurance for ~~((a terminated))~~ an employee, spouse, ~~((qualified))~~ Washington state registered domestic partner, or child ceases at 12:00 midnight, the last day of the month in which the ~~((enrollee))~~ employee is eligible for the employer contribution under this rule. ~~((Basic long-term disability insurance ceases at 12:00 midnight the date employment ends or immediately upon the death of the employee.))~~

(8) Options for continuation coverage by self-paying. During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the HCA. These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-133 What options for ~~((continuing))~~ continuation coverage are available to employees ~~((when they are no longer eligible for PEBB insurance coverage paid for by their employer))~~ on certain types of leave or whose work ends due to a layoff? ~~((Eligible))~~ Employees ~~((covered by PEBB insurance coverage))~~ who have established eligibility for PEBB benefits under WAC 182-12-114 have options for providing ~~((continued))~~ continuation coverage for themselves and their dependents by self-paying the full premium set by the HCA during temporary or permanent loss of ~~((eligibility))~~ the employer contribution toward insurance coverage. ~~((Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.))~~

(1) When an employee is ~~((on leave without pay))~~ no longer eligible for the employer contribution toward PEBB benefits due to an event described in (a) through (f) of this subsection, insurance coverage may be continued ~~((at the group rate by self-paying premiums))~~ by self-paying the full premium set by the HCA, with no contribution from the employer. Employees may self-pay for a maximum of twenty-nine months. ~~((The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA).))~~ The employee must pay the premium amounts associated with insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid. Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance.

Employees in the following ((types of leave)) circumstances qualify to continue coverage under this ((provision)) subsection:

- (a) The employee is on authorized leave without pay;
- (b) The employee is ~~((laid off because of a reduction in force (RIF)))~~ on approved educational leave;
- (c) The employee is receiving time-loss benefits under workers' compensation;
- (d) The employee is ~~((applying for disability retirement))~~ called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);
- (e) The ~~((employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA)))~~ employee's employment ends due to a layoff as defined in WAC 182-12-109; or
- (f) The employee is ~~((on approved educational leave))~~ applying for disability retirement.

~~(2) ((Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. These employees may continue any combination of medical, dental and life insurance.~~

~~(3)) The number of months that an employee self-pays the premium while eligible under subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) ((gives enrollees the right to continue medical and dental for a period of eighteen to twenty-nine months when they lose eligibility due to one of the following qualifying events:~~

- ~~(a) Termination of employment.~~
- ~~(b) The employee's hours are reduced to the extent of losing eligibility.~~

~~(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to twenty-six weeks, as provided in WAC 182-12-138). An employee who is no longer eligible for continuation coverage as described in subsection (1) of this section but who has not used the maximum number of months allowed under COBRA may continue medical and dental for the remaining difference in months by self-paying the premium under COBRA as described in WAC 182-12-146.~~

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-136 May an employee on approved educational leave waive ((PEBB health plan)) continuation coverage? In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for continuation coverage provided in WAC 182-12-133 who obtain comprehensive health plan coverage under another group plan may waive continuance of such coverage for each full calendar month in which they maintain coverage under the other comprehensive group health plan. These employees have the right to reenroll in a PEBB health plan

effective the first day of the month after the date the other comprehensive group health plan coverage ends, provided evidence of such other comprehensive group health plan coverage is provided to the PEBB ((benefits services)) program upon application for reenrollment.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-138 What options are available if an employee is approved for ((family and medical leave, what insurance coverage may be continued)) the federal Family and Medical Leave Act (FMLA)? (1) Employees on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive ~~((up to twenty-six weeks of))~~ the employer((paid medical, dental, basic life, and basic long-term disability insurance)) contribution toward insurance coverage in accordance with the federal FMLA. These employees may also continue current optional life and long-term disability. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave. ~~((The employee must pay the premium amounts associated with insurance coverage monthly as premiums become due.))~~ If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium ~~((is))~~ was paid.

(2) If an employee exhausts the period of leave approved under FMLA, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer, under WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-141 If I revert from an eligible position to ((an ineligible)) another position, what happens to my insurance coverage? ~~((Employees who revert to a position that is ineligible))~~ (1) If you have reverted for reasons other than a layoff and are not eligible for the employer contribution toward insurance coverage under this chapter, you may continue ((enrollment in a)) PEBB ((health plan)) insurance coverage by self-paying the full premium set by the HCA for up to eighteen months ((and in some cases up to twenty-nine months)) under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1).

(2) If you are reverted due to a layoff:

(a) You may be eligible for the employer contribution toward insurance coverage under the criteria of WAC 182-12-129; or

(b) You may continue PEBB insurance coverage by self-paying the full premium set by the HCA under WAC 182-12-133.

NEW SECTION

WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility? (1) Faculty may continue any combination of medical, dental and life insurance

coverage by self-paying the full premium set by the HCA, with no contribution from the employer, for a maximum of twelve months between periods of eligibility. The employee must pay the premium amounts associated with insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(2) **Benefits-eligible seasonal employees** may continue any combination of medical, dental and life insurance coverage by self-paying the full premium set by the HCA, with no contribution from the employer, during their off-season(s). The employee must pay the premium amounts associated with insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(3) **COBRA.** An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical and dental for the remaining difference in months by self-paying the full premium set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-146 ~~((Continuing health plan))~~ What options for continuation coverage are available to subscribers and dependents who become eligible under COBRA ~~((-))~~ ~~2~~ ~~((Enrollees))~~ (1) Employees and eligible dependents who become ineligible for the employer contribution toward PEBB insurance coverage and who qualify for ~~((continued))~~ continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue their medical and dental by ~~((self-payment of health plan premiums))~~ self-paying the full premium set by the HCA in accordance with COBRA statutes and regulations.

(2) An employee or an employee's dependent who is no longer eligible for continuation coverage as described in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148, but who has not used the maximum number of months allowed under COBRA, may continue medical and dental for the remaining difference in months by self-paying the premium under COBRA as described in subsection (1) of this section.

(3) Retired and disabled employees who become ineligible for PEBB retiree insurance because an employer group, with the exception of school districts and educational service districts, ceases participation in PEBB insurance coverage may continue their medical and dental by self-paying the full premium set by the HCA, in accordance with COBRA statutes and regulations.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-148 ~~((May an employee continue PEBB insurance))~~ What options for continuation coverage are available to employees during their appeal of dismissal?

(1) Employees awaiting hearing of a dismissal action before any of the following may continue their insurance coverage by ~~((self-payment of))~~ self-paying the full premium set by the HCA, with no contribution from the employer, on the same terms as an employee who is granted leave ~~((without pay-))~~ as described in WAC 182-12-133:

(a) ~~((For an appeal filed on or before June 30, 2005, the personnel appeals board or any court.~~

~~((b) For an appeal filed on or after July 1, 2005,))~~ The personnel resources board ~~((-))~~ ;

~~((b) An arbitrator~~ ~~((-))~~ ; ~~or~~

~~((c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees.~~

(2) If the dismissal is upheld, all insurance coverage will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is earlier, with the exception described in subsection (3) of this section.

~~((3))~~ (3) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue medical and dental for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(4) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid insurance coverage retroactively, the ~~((employer))~~ employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

~~((b))~~ (a) HCA will refund to the employee any premiums the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums self-paid by the employee during the appeal period.

~~((c))~~ (b) All optional life and long-term disability insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) Procedural requirements. Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit the appropriate forms to enroll or defer insurance coverage within sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in a PEBB health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment as identified in WAC 182-12-200 or 182-12-205 and maintained comprehensive ((coverage)) employer sponsored medical as ((identified in WAC 182-12-200 or 182-12-205)) defined in WAC 182-12-109.

(b) The employee and enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance, ((they)) he or she must enroll and maintain enrollment in medicare.

(2) **Eligibility requirements.** Eligible employees (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the PEBB appeals committee to determine eligibility (see WAC 182-16-032). Employees must meet other retiree insurance election procedural requirements.

- Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

- Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

- Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age requirement and length of service when PEBB employee

insurance coverage ends. They do not have to receive a retirement plan payment.

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

- Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

- Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

- Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected (~~state~~) and full-time appointed officials of the legislative and executive branches.** Employees who are elected **and full-time appointed** state officials (as defined under WAC ((~~482-12-115(6)~~) 182-12-114(4)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and firefighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-175 May a local government entity or tribal government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government or tribal government entities applying for participation in PEBB insurance coverage under WAC 182-12-111 ((~~(4) and (6)~~) (2)), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB ((~~benefits services~~)) program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government or tribal government retiree health plan must have existed at least three years before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's or tribal government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government or tribal government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government or tribal government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB ((~~benefits services~~)) program may:

(a) Stop approving inclusion of retirees with local government or tribal government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government or tribal government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government or tribal government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB health plan or a Washington state K-12 school district sponsored health plan defer enrollment in a PEBB retiree health plan? Retirees who are enrolled in a PEBB or Washington state K-12 school district sponsored medical plan as a dependent may defer enrollment in a PEBB retiree health plan. Retirees who defer enrollment in medical cannot remain enrolled in dental. Retirees who defer may later enroll themselves and their dependents in PEBB retiree medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in retiree insurance. Retirees may enroll:

(1) During any PEBB annual open enrollment period. (Enrollment in the PEBB health plan will begin ((~~the first day of~~) January 1st after the annual open enrollment period.); or

(2) No later than sixty days after enrollment in the PEBB or K-12 school district sponsored medical plan ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement? Except as stated in subsection (1)(c) of this section and for adult dependents as defined in WAC 182-12-260 ((~~(4)~~)(3)(d)), if retirees defer enrollment in a PEBB health plan, they also defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance.

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive employer sponsored medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(2) To defer health plan enrollment, the retiree must submit the appropriate forms to the PEBB (~~(benefits services)~~) program requesting to defer. The PEBB (~~(benefits services)~~) program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in comprehensive employer-sponsored medical may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB (~~(benefits services)~~) program:

(i) During annual open enrollment. (~~(Enrollment in the)~~) PEBB health plan will begin (~~(the first day of)~~) January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their comprehensive employer-sponsored medical ends. (~~(Enrollment in the)~~) PEBB health plan will begin the first day of the month after the comprehensive employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB (~~(benefits services)~~) program:

(i) During annual open enrollment. (~~(Enrollment in the)~~) PEBB health plan will begin (~~(the first day of)~~) January 1st after the annual open enrollment.); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and medicaid may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in creditable coverage to the PEBB (~~(benefits services)~~) program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin (~~(the first day of)~~) January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a medicare Part D plan. (Enrollment in the PEBB health plan will begin (~~(the first day of)~~) January 1st following the end of the calendar year when the medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is

more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-207 When can a retiree or eligible dependent's insurance coverage be canceled by HCA? A retiree or eligible dependent's insurance coverage can be canceled by HCA for the following reasons:

(1) Failure to comply with the PEBB program's procedural requirements, including failure to provide information or documentation requested by the due date (~~(or)~~) in written requests from the PEBB program:

~~(2) Knowingly providing false information(-);~~

~~((2)) (3) Failure to pay the premium when due or an underpayment of premium(-);~~

~~((3)) (4) Misconduct.~~ If a retiree's insurance coverage is canceled for misconduct, insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium; or

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing insurance coverage on behalf of the HCA, its employees, or other persons.

If a retiree's insurance coverage is canceled by HCA for the above reasons, insurance coverage for all of the retiree's eligible dependents is also canceled.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-208 May a retiree enroll only in dental?

If an enrollee is enrolled in retiree insurance coverage, (~~(they)~~) he or she may not enroll in dental unless (~~(they)~~) he or she is also (~~(enroll)~~) enrolled in medical.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit the appropriate forms to the PEBB (~~(benefits services)~~) program no later than sixty days after the date their PEBB employee life insurance ends. (~~(However,)~~)

(1) Employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends.

(2) Retirees may not defer enrollment in retiree term life insurance.

(3) If a retiree returns to active employee status in an employing agency, he or she must continue to self-pay retiree

life insurance premiums in order to maintain retiree term life insurance (even while participating in PEBB employee life insurance).

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

WAC 182-12-211 If department of retirement systems makes a formal determination of retroactive eligibility, may the retiree enroll in PEBB retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits that person may apply for enrollment in a PEBB health plan only if application is made within sixty days after the date of notice from DRS.

(2) All premiums due from the date of eligibility established by DRS or the date of the DRS decision letter, at the option of the retiree, must be sent with the application to the PEBB (~~(benefits services)~~) program.

(3) The administrator may make an exception to the date PEBB retiree insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, Washington state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the PEBB (~~(benefits services)~~) program within HCA.

(1) This section applies to the surviving spouse, the surviving Washington state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, Washington state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A Washington state registered domestic partner as defined in RCW 26.60.020; and

(d) Children. The term "children" includes unmarried children of the emergency service worker who are under the age of twenty-five. Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a Washington state registered domestic partner; and

(iii) Legally adopted children.

(4) Surviving spouses, Washington state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on their behalf) must submit the appropriate forms (to either enroll or defer enrollment in a PEBB health plan) to PEBB (~~(benefits services)~~) program no later than one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose appropriate forms are received by the PEBB (~~(benefits services)~~) program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB (~~(benefits services)~~) program receives the appropriate forms (for example, if the PEBB (~~(benefits services)~~) program receives the appropriate forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB (~~(benefits services)~~) program receives the appropriate forms.

For surviving spouses, Washington state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b). For children age twenty through age twenty-four who enroll and are not students under the age of twenty-four attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing: The adult dependent premium must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if enrolled in comprehensive employer sponsored medical (~~(coverage through an employer)~~).

(ii) Survivors may enroll in a PEBB health plan when they lose comprehensive employer sponsored medical (~~(coverage)~~). Survivors will need to provide evidence that they

were continuously enrolled in comprehensive employer sponsored medical (~~(coverage through an employer)~~) when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified domestic partnership.

(10) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive employer sponsored medical (~~(coverage)~~) through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The PEBB program verifies the eligibility of all dependents periodically and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility within a specified time.

The subscriber or dependent must notify the PEBB program, in writing, no later than sixty days after the date he or she is no longer eligible under this section. See WAC 182-12-262 for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) ~~(Domestic partner qualified by the PEBB declaration of domestic partnership that meets all of the following criteria:~~

~~(a) Partners have a close personal relationship in lieu of a lawful marriage;~~

~~(b) Partners are not married to anyone;~~

~~(c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;~~

~~(d) Partners are not related by blood as close as would bar marriage; and~~

~~(e) Partners are barred from a lawful marriage in Washington state.~~

~~(3) Domestic partner qualified by the certificate of) Effective January 1, 2010, Washington state registered domestic ((partnership or registration card issued by the Washington secretary of state for a same-sex partnership)) partners, as defined in RCW 26.60.020(1). Former Washington state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.~~

~~((4)) (3) Children. Children are defined as the subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child, children of the subscriber's ((qualified)) Washington state registered domestic partner, or children specified in a court order or divorce decree. In addition, children include extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's ((qualified)) Washington state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program.~~

Eligible children include:

(a) Unmarried children through age nineteen.

(b) Married children through age nineteen who qualify as dependents of the subscriber under the Internal Revenue Code.

(c) Students: Unmarried children age twenty through age twenty-three who are attending high school or are registered students at an accredited secondary school, college, university, vocational school, or school of nursing ~~((students))~~. A married child is eligible as a student if the child is a dependent of the subscriber under the Internal Revenue Code.

(i) A child is eligible as a student or can maintain eligibility as a student when not registered for courses through the summer or off quarter/semester as long as the child meets all other eligibility requirements and is in any one of the following circumstances:

• The child attended the three consecutive quarters or two consecutive semesters before the off quarter/semester.

~~((The child is an enrolled dependent turning age twenty or renewing annual student certification and the child is expected to register for three consecutive quarters or two consecutive semesters after the off quarter/semester.))~~

• The child recently graduated. Graduation is defined as the successful completion of studies to earn a degree or certificate, not the date of the graduation ceremony. The child is eligible for the three month period following graduation.

(ii) For student dependents who are not eligible for the summer or off quarter/semester according to (c)(i) of this subsection, student eligibility begins the first day of the month of the quarter or semester for which the child is registered, and eligibility ends the last day of the month in which the student ~~((stops attending))~~ is registered or in which the quarter or semester ends, whichever is first.

~~((The PEBB benefits services program certifies students annually. Health plan enrollment ends the last day of the month in which certification ends or the student ceases to meet eligibility criteria, whichever comes first. See WAC 182-12-262 (3)(g) and (7) for enrollment requirements.))~~

Exception: ~~If a student becomes seriously ill or injured and requires a medically necessary leave of absence from attending school, his or her coverage may continue if qualified under and in accordance with the federal Michelle's Law (Public Law 110-381).~~

(d) Adult dependents: Unmarried children age twenty through age twenty-four ~~((adult dependents))~~.

Subscriber must pay the adult dependent premium for adult dependents whom the subscriber has enrolled. ~~((Non-payment of premium will result in termination of coverage back to the end of the month for which the last full month premium was paid.))~~

Adult dependents must enroll in the same health plan as the subscriber.

Exception: The adult dependent may enroll in a different health plan than the subscriber if the dependent does not reside within the subscriber's plan service area or the subscriber has waived or deferred medical.

(e) Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs before age twenty or during the time the dependent was eligible as a student under (c) of this subsection.

The subscriber must provide evidence that such disability occurred as stated below:

(i) For a child enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability within sixty days of the child's attainment of age twenty.

(ii) For a child enrolled in PEBB insurance coverage as a student under (c) of this subsection, the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under (c) of this subsection.

(iii) For a child, age twenty or older, who is a new dependent or for a child, age twenty or older, who is a dependent of a newly eligible subscriber, the child may be enrolled as a dependent child with disabilities if the subscriber provides evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the child would have satisfied PEBB eligibility for student coverage under (c) of this subsection had the subscriber been eligible for PEBB benefits at the time.

The subscriber must notify the PEBB ~~((benefits services))~~ program, in writing, no later than sixty days after the date that a child age twenty or older no longer qualifies under this subsection.

For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The child may be eligible to continue enrollment as an adult dependent, as per (d) of this subsection, or in a PEBB health plan under provisions of WAC 182-12-270.

Children age twenty and older who become capable of self-support do not regain eligibility under (e) of this subsection if they later become incapable of self-support.

The PEBB ~~((benefits services))~~ program will ~~((re-certify))~~ certify the eligibility of children with disabilities periodically.

~~((5))~~ (4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

~~((6) The enrollee (or the subscriber on their behalf) must notify the PEBB benefits services program, in writing, no later than sixty days after the date they are no longer eligible under this section. A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.))~~

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-262 When may subscribers enroll ~~((waive))~~ or remove eligible dependents? (1) Enrolling dependents in health plan coverage. Subscribers may enroll ~~((or waive))~~ eligible dependents at the following times:

(a) When the subscriber becomes eligible and enrolls in PEBB insurance coverage. If enrolled, the dependent's effective date will be the same as the subscriber's effective date. ~~((Unless a dependent is independently eligible for PEBB health plan coverage.))~~ The subscriber must be enrolled to enroll ~~((their))~~ his or her dependent.

Exceptions:

- Adult dependents may enroll in a health plan if the employee has waived medical coverage or the retiree has deferred enrollment in PEBB retiree insurance in accordance with PEBB rule;

OR

- Eligible dependents of a retiree may enroll in a health plan if the retiree deferred PEBB retiree insurance coverage due to the retiree's enrollment in medicare and creditable medicaid under WAC 182-12-205 (1)(c).

~~((2) Subscribers may enroll eligible dependents))~~

(b) During the annual open enrollment ~~((with))~~, PEBB health plan coverage ~~((beginning))~~ begins January 1st of the following year.

~~((3) Subscribers may enroll a newly acquired dependent or a dependent that becomes eligible during a special open enrollment.~~

(a) A spouse may be enrolled upon marriage. If the date of marriage is the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(b) A qualified domestic partner may be enrolled upon declaration or registration of the domestic partnership (see WAC 182-12-260). If the date of declaration or registration is the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(c) Newborn children may be enrolled upon birth and adopted children may be enrolled when the subscriber assumes legal responsibility for the child in anticipation of adoption. The child's health plan coverage will begin on the date of birth or the date the subscriber assumes legal responsibility for the child in anticipation of adoption. The subscriber must submit the appropriate forms as described in subsection (7) of this section no later than sixty days after birth or assuming legal responsibility for the child.

(d) Children acquired through marriage or a qualified domestic partnership may be enrolled upon marriage or declaration or registration of the domestic partnership as described in (a) or (b) of this subsection.

(e) Extended dependents acquired through legal guardianship or legal custody (see WAC 182-12-260(4)) may be enrolled upon issuance of a court order granting such responsibility to the subscriber, spouse, or qualified domestic partner. If legal guardianship or legal custody begins on the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the following month.

(f) Children age twenty through age twenty-four (adult dependents) may be enrolled when they become eligible (see WAC 182-12-260 (4)(d)). If they become eligible on the first day of the month, health plan coverage will begin on that date; otherwise, it will begin the first of the month following the date they become eligible. For enrollment requirements, see subsection (7) of this section.

(g) Children who become eligible as students may be enrolled provided the child's eligibility is certified by the PEBB benefits services program. If enrolled, the child's insurance coverage will begin or continue on the first day of the month the child becomes eligible as a student according to WAC 182-12-260 (4)(e).

(h) A child twenty years or older who becomes eligible as a child with disabilities under WAC 182-12-260 (4)(e) may be enrolled after the child's eligibility is certified by the PEBB benefits services program.

Health plan coverage will begin on the first day of the month that eligibility is certified by the PEBB benefits services program.

(4)) (c) **During special open enrollment.** Subscribers may enroll dependents when the dependent becomes eligible or during another special open enrollment as described in subsections (3) and (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **Subscribers are required to remove dependents within sixty days of the date the dependent no longer meets the eligibility criteria in WAC 182-12-250 or 182-12-260. The PEBB program will remove a subscriber's enrolled dependent the last day of the month in which the dependent ceases to meet the eligibility criteria. Consequences for not submitting notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:**

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums that included dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsection (3) of this section. The dependent will be removed the last day of the month following the date corresponding to the event that creates the special open enrollment.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.**

(3) **Special open enrollment.** Subscribers may (~~change the enrollment~~) enroll (~~or waive~~) or remove (~~or of~~) their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both. (~~Enrollment in~~)

- Health plan coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, (~~enrollment~~) health plan coverage will begin on that date.

- Dependents will be removed from the subscriber's health plan coverage the last day of the month following the event.

- If the special open enrollment is due to the birth or adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs. The following changes are events that create a special open enrollment for medical and dental:

(a) Subscriber acquires an eligible dependent through marriage, registering a domestic partnership with Washington state, birth, adoption or (~~placement for~~) when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption, legal custody or legal guardianship;

(b) A dependent becomes eligible by fulfilling PEBB dependent eligibility criteria under WAC 182-12-250 or 182-12-260;

(c) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

~~((e))~~ (d) Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;

~~((d))~~ (e) Subscriber or a dependent loses comprehensive group health insurance coverage;

~~((e))~~ (f) Subscriber or a dependent has a change in employment status that affects the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

~~((f))~~ (g) Subscriber or a dependent has a change in place of residence that affects the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage;

~~((g))~~ (h) Subscriber receives a court order or medical support enforcement order requiring the subscriber, their spouse, or ~~((qualified))~~ Washington state registered domestic partner to provide insurance coverage for an eligible dependent. (A former spouse or former registered domestic partner is not an eligible dependent.);

~~((h))~~ (i) Subscriber ~~((receives formal notice that))~~ or dependent becomes eligible for a medical assistance program under the department of social and health services ((has determined it is more cost-effective to enroll an eligible dependent in PEBB medical than)), including medicaid or the children's health insurance program (CHIP), or the subscriber or dependent loses eligibility in such a medical assistance program(-

~~(5) Subscribers may waive (interrupt or postpone) enrollment of an eligible dependent.~~

(a) Employees may only waive dependents if those dependents are enrolled in another comprehensive group health plan. Employees may only waive an eligible dependent's enrollment at the following times:

(i) ~~When the employee is first eligible and enrolls in PEBB benefits. (The dependent's enrollment will be waived beginning with the employee's effective date.);~~

(ii) ~~During the annual open enrollment. (The dependent's enrollment will be waived beginning January of the following year.);~~

(iii) ~~No later than sixty days after the dependent becomes eligible as described in subsection (3) of this section. (The dependent's enrollment will be waived beginning the date enrollment would have begun.); or~~

(iv) ~~During a special open enrollment as described in subsection (4) of this section. (The dependent's enrollment will be waived as of the date corresponding to the event that creates the special open enrollment.)~~

(b) ~~Retirees, survivors or individuals continuing PEBB insurance coverage under WAC 182-12-133 or 182-12-270 may waive enrollment of an eligible dependent outside of the annual open enrollment or a special open enrollment. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.~~

(c) ~~Subscribers may enroll eligible dependents that were waived as stated in subsections (2) and (4) of this section.~~

~~(6) Subscribers must remove dependents from the subscriber's insurance coverage within sixty days of the date the dependent no longer meets eligibility criteria in WAC 182-12-250 or 182-12-260. Insurance coverage enroll-~~

~~ment ends the last day of the month in which the dependent is eligible.~~

~~Subscribers may remove a lawful spouse from PEBB insurance coverage in the event of legal separation documented by a court order, provided the court did not order the subscriber to maintain the spouse's health plan enrollment. Subscribers must remove former spouses and former qualified domestic partners upon finalization of a divorce, annulment, or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former spouse or partner.~~

~~Consequences for not submitting notice as described in subsection (7) of this section within sixty days of any dependent ceasing to be eligible may include:~~

~~(a) The dependent's loss of eligibility to continue health plan enrollment under one of the continuation options described in WAC 182-12-270;~~

~~(b) The subscriber being billed for claims paid by the health plan for services after the dependent lost eligibility; and~~

~~(c) The subscriber being responsible for premiums paid by the state for the dependent's health plan enrollment after the dependent lost eligibility.~~

~~(7)); or~~

~~(j) Subscriber or dependent dies.~~

~~(4) **Enrollment requirements.** Subscribers must submit the appropriate forms within the time frames described in this subsection. Employees submit the appropriate forms to their employing agency. All other subscribers submit the appropriate forms to the PEBB ((benefits services)) program. In addition to the appropriate forms indicating dependent enrollment, the PEBB ((benefits services)) program may require the subscriber to provide documentation or evidence of eligibility or evidence of the event that created the special open enrollment.~~

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the appropriate forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the appropriate forms no later than the end of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber must submit the appropriate enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty or older as a child with disabilities, the subscriber must submit the appropriate enrollment form(s) required to certify the dependent's eligibility within the relevant time frame described in WAC 182-12-250(3) or 182-12-260((4)) (3).

((e)) (f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate forms no later than sixty days after the event that creates the special open enrollment.

((f)) (g) If the subscriber wants to ((waive)) remove a ((dependent's)) dependent from enrollment during an open enrollment, the subscriber must submit the appropriate forms. Unless otherwise approved by the PEBB ((benefits services)) program, enrollment will be ((waived)) removed prospectively.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in ((public employees benefits board-))PEBB((s)) retiree insurance coverage as a surviving dependent. An eligible surviving spouse, ((qualified)) Washington state registered domestic partner, or child must enroll in or defer enrollment in a PEBB medical plan no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan enrollment as a survivor under retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or ((qualified)) Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving spouse, ((qualified)) Washington state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible for PEBB retiree insurance as a survivor. However, the dependent may continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents who lose eligibility due to the death of a PEBB eligible retiree may continue health plan enrollment under retiree insurance.

(a) The retiree's spouse or ((qualified)) Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents, ((whose enrollment)) who are not enrolled in a PEBB health plan ((is waived)) at the time of the retiree's death, are eligible to enroll or defer enrollment in PEBB retiree insurance. A form to enroll or defer PEBB health plan enrollment must be hand-delivered or mailed to the PEBB ((benefits services)) program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide satisfactory evidence of continuous enrollment in other medical coverage from the most recent open enrollment for which enrollment in PEBB was ((waived)) deferred.

(3) Surviving spouses, Washington state registered domestic partners, or eligible children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB health plan provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or ((qualified)) Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB ((benefits services)) program of their decision to enroll or defer enrollment in a PEBB health plan no later than sixty days after the date of death of the employee or retiree. If PEBB health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan under WAC 182-12-200 and 182-12-205. To notify the PEBB ((benefits services)) program of their intent to enroll or defer enrollment in a PEBB health plan, the surviving dependent must submit the appropriate forms to the PEBB ((benefits services)) program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the full premiums set by the HCA, with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The PEBB ((benefits services)) program must receive the appropriate forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing

health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, ~~((qualified))~~ Washington state registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment under provisions of WAC 182-12-250 or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

Exception: A qualified domestic partner who loses eligibility because he or she no longer meets the eligibility criteria in WAC 182-12-260 may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No ~~((extension of))~~ PEBB continuation coverage will be offered unless the PEBB ~~((benefits services))~~ program is notified through hand-delivery or United States Postal Service mail of ~~((a completed notice of))~~ the qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|----------------|---|
| WAC 182-12-112 | Insurance eligibility for higher education. |
| WAC 182-12-115 | Eligible employees. |
| WAC 182-12-121 | Does a change in position or job affect eligibility status? |

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Administrator" means the administrator of the health care authority (HCA) or designee;

"Agency" means the health care authority;

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB ~~((benefits services))~~ program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB ~~((benefits services))~~ program within the HCA.

"PEBB ~~((benefits services))~~ program" means the program within the ~~((health care authority))~~ HCA which administers insurance and other benefits for eligible employees (as defined in WAC ~~((182-12-115))~~ 182-12-114), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by ~~((an employing))~~ a state agency about eligibility or enrollment in benefits? Any employee or employee's dependent aggrieved by a decision made by ~~((an employing))~~ a state agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the ~~((employing))~~

state agency. Any dependent aggrieved by a decision made by the PEBB program may appeal the decision by submitting an appeal to the PEBB appeals committee in the same manner as a self-pay enrollee as described in WAC 182-16-032.

Any employer group employee or employee's dependent aggrieved by a decision with regard to PEBB eligibility, enrollment or premium payment may appeal that decision to the employer group. Appeals to employer groups are not subject to this rule.

Note: Eligibility decisions address whether an employee or an employee's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including but not limited to the submission of proper documentation and meeting enrollment deadlines.

The ~~((employing))~~ state agency may only reverse eligibility or enrollment decisions based on circumstances that arose due to delays caused by the ~~((employing))~~ state agency or error(s) made by the ~~((employing))~~ state agency.

(1) Any employee or employee's dependent aggrieved by an eligibility or enrollment decision made by ~~((an employ- ing))~~ a state agency may appeal the decision by submitting a written request for review to the ~~((employing))~~ state agency. The ~~((employing))~~ state agency must receive the request for review within thirty days of the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the ~~((employ- ing))~~ state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the ~~((employing))~~ state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The ~~((employing))~~ state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the ~~((employing))~~ state agency's written decision shall be sent to the ~~((employing))~~ state agency's administrator or designee and to the PEBB appeals manager. The ~~((employing))~~ state agency's written decision shall become the ~~((employing))~~ state agency's final decision effective fifteen days after the date it is rendered.

(2) Any employee or employee's dependent who disagrees with the ~~((employing))~~ state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the ~~((employing))~~ state agency's written decision on the request for review.

As well, any employee or employee's dependent may appeal a decision about premium payments by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-032 How can a retiree ~~((or))~~, self-pay enrollee, or dependent appeal a decision made by the PEBB ~~((benefits services))~~ program regarding eligibility, enrollment or premium payments? Any retiree ~~((or))~~, self-pay enrollee, or dependent aggrieved by a decision made by the PEBB ~~((benefits services))~~ program with regard to public employee benefit eligibility, enrollment, or premium payments may appeal the decision to the PEBB appeals committee.

Note: Eligibility decisions address whether a retiree, self-pay enrollee or their dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including, but not limited to the submission of proper documentation, enrollment deadlines, and premium related issues.

The PEBB appeals manager must receive the notice of appeal within sixty days of the date of the denial notice by the PEBB ~~((benefits services))~~ program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-034 How can a PEBB enrollee appeal a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property or casualty insurance? Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance may ~~((do so))~~ appeal that decision by following the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility, enrollment and premium payment determinations. Employees and their dependents should refer to WAC 182-16-030 for eligibility, enrollment and premium payment appeals. Retirees, self-pay enrollees, and their dependents should refer to WAC 182-16-032 for eligibility, enrollment and premium payment appeals.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-036 How can an enrollee appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any enrollee aggrieved by a decision regarding the medical FSA and DCAP offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan.

(2) Any enrollee who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP offered under the state's salary reduction plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any enrollee aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the PEBB (~~(benefits services)~~) program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

WAC 182-16-037 How can an enrollee appeal a decision by the agency's self-insured dental plan? Any enrollee aggrieved by a decision by the agency's self-insured dental plan (Uniform Dental Plan) may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice by the agency's self-insured dental plan. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

(3) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

WSR 09-23-111

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 18, 2009, 7:49 a.m., effective December 19, 2009]

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

Purpose: The first steps child care program is eliminated in order for the department to fully meet the legislatively mandated appropriation reduction in chapter 564, Laws of 2009 (ESHB 1244), for maternity support services. WAC 388-533-1000 was repealed by emergency adoption effective June 1, 2009.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-533-1000.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

Other Authority: Chapter 564, Laws of 2009 (ESHB 1244).

Adopted under notice filed as WSR 09-20-107 on October 7, 2009.

A final cost-benefit analysis is available by contacting Todd Slettvett, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1626, fax (360) 664-4371, e-mail todd.slettvett@dshs.wa.gov.

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

Number of Sections Adopted at 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 1.

Date Adopted: November 18, 2009.

Susan N. Dreyfus
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-533-1000 First steps child care program.

**WSR 09-23-112
PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 18, 2009, 9:22 a.m., effective December 19, 2009]

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

Purpose: The purpose of these rule changes is to:

- Clarify that providers must be enrolled with the department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients;
- Clarify when the department pays for healthcare services;
- Clarify that the department does not reimburse clients for healthcare services purchased out-of-pocket;
- Clarify that the department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, or misuse unless:
 - Extenuating circumstances exist that result in a loss or destruction of department-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or
 - Otherwise allowed under chapter 388-500 WAC.
- Clarify that the department's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific department program rules;
- Clarify how a noncovered healthcare service, recommended during an EPSDT exam, is evaluated by the department for coverage;
- Correctly alphabetize the list of noncovered items;
- Add discography and upright magnetic resonance imaging to the list of noncovered services;
- Clarify that a client has the right to an administrative hearing, if one is available under state and federal law;
- Add a new section (WAC 388-501-0163) to clarify the process for submitting a valid request for authorization; and
- Clarify limitation extensions.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0050, 388-501-0070, and 388-501-0169.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700.

Adopted under notice filed as WSR 09-14-076 on June 29, 2009.

Changes Other than Editing from Proposed to Adopted Version: As a result of stakeholder comments at the public hearing, the department made the following changes from the proposed to the adopted version:

WAC 388-501-0050 Healthcare general coverage.

(5) The department does not pay for any healthcare service (~~(- treatment, equipment, drug, or supply)~~) requiring prior authorization from the department, if prior authorization was not obtained before the healthcare service was provided, unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(7) The department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, or misuse unless: ~~otherwise allowed in specific program rules.~~

(a) Extenuating circumstances exist that result in a loss or destruction of department-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under chapter 388-500 WAC.

(8) The department's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific department program rules.

WAC 388-501-0070 Healthcare coverage—Noncovered services.

~~(6)(e)(i) General Administrative hearing rights;~~

WAC 388-501-0163 Healthcare coverage—Process for submitting a valid request for authorization.

(2) Department authorization requirements for covered healthcare services are not a denial of service ~~and do not create a right to an administrative hearing.~~

(3) The department returns invalid requests to the provider and takes no further action unless the request for authorization is resubmitted. The return of an invalid request is not a denial of service ~~and does not create a right to an administrative hearing.~~

(4) Failure of a provider to request authorization for a healthcare service that requires it or a provider's failure to do so properly is not a denial of service ~~and does not create a right to an administrative hearing.~~

A final cost-benefit analysis is available by contacting Gail Kreiger, DSHS, HRSA, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1681, fax (360) 586-9727, e-mail kreigga@dshs.wa.gov.

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

Number of Sections Adopted at 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 1, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: November 18, 2009.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-501-0050 Healthcare general coverage. ~~((The following rules,))~~ WAC 388-501-0050 through 388-501-0065~~((;))~~ describe the healthcare services available to a client on a fee-for-service basis or ~~((as an enrollee))~~ to a client enrolled in a managed care organization (MCO) (defined in WAC 388-538-050). For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. WAC 388-501-0070 describes noncovered services ((are described in WAC 388-501-0070)).

(1) Healthcare service categories listed in WAC 388-501-0060 do not represent a contract for healthcare services.

(2) For the provider to receive payment, the client must be eligible for the covered healthcare service on the date the healthcare service is performed or provided.

(3) Under the department's fee-for-service programs, providers must be enrolled with the department and meet the requirements of chapter 388-502 WAC to be paid for furnishing healthcare services to clients.

(4) The department pays only for ~~((medical or dental services, equipment, or supplies))~~ the healthcare services that are:

(a) Within the scope of the client's medical program;

(b) Covered - see subsection ~~((5))~~ (8) of this section;

(c) ~~((Medically necessary;~~

~~((d)))~~ Ordered or prescribed by a healthcare provider ((meeting)) who meets the requirements of chapter 388-502 WAC; ((and))

(d) Medically necessary as defined in WAC 388-500-0005;

(e) Submitted for authorization, when required, in accordance with WAC 388-501-0163;

(f) Approved, when required, in accordance with WAC 388-501-0165;

(g) Furnished by a provider according to ((the requirements of)) chapter 388-502 WAC; and

(h) Billed in accordance with department program rules and the department's current published billing instructions and numbered memoranda.

~~((4))~~ The department's fee-for-service program pays only for services furnished by enrolled providers who meet the requirements of chapter 388-502 WAC.)

(5) The department does not pay for any healthcare service~~((, treatment, equipment, drug, or supply))~~ requiring prior authorization from the department, if prior authorization was not obtained before the healthcare service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The department does not reimburse clients for healthcare services purchased out-of-pocket.

(7) The department does not pay for the replacement of department-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of department-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under chapter 388-500 WAC.

(8) The department's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific department program rules.

(9) Covered healthcare services

(a) Covered healthcare services are either:

(i) "Federally mandated" - means the state of Washington is required by federal regulation (42 CFR 440.210 and 220) to cover the healthcare service for Medicaid clients; or

(ii) "State-option" - means the state of Washington is not federally mandated to cover the healthcare service but has chosen to do so at its own discretion.

(b) The department may limit the scope, amount, duration, and/or frequency of covered healthcare services. Limitation extensions are authorized according to WAC 388-501-0169.

~~((7))~~ **(10) Noncovered healthcare services**

(a) The department does not pay for any healthcare service~~((, equipment, or supply))~~:

(i) That federal or state laws or regulations prohibit the department from covering; or

(ii) Listed as noncovered in WAC 388-501-0070 or in any other program rule. The department evaluates a request for a noncovered healthcare service only if an exception to rule is requested according to the provisions in WAC 388-501-0160.

(b) When a noncovered healthcare services is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) ((applies, a noncovered)) exam and then ordered by a provider, the department evaluates the healthcare service ((, equipment, or supply will be evaluated)) according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 07-04-036, filed 1/29/07, effective 3/1/07)

WAC 388-501-0070 Healthcare coverage—Noncovered services. (1) The department does not pay for any healthcare service~~((, treatment, equipment, drug or supply))~~ not listed or referred to as a covered healthcare service under the medical programs described in WAC 388-501-0060, regardless of medical necessity. For the purposes of this sec-

tion, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances ~~((under))~~ in which clients are responsible for payment of healthcare services are described in WAC 388-502-0160.

(2) This section does not apply to healthcare services provided ~~((under))~~ as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 388-534 WAC.

(3) The department does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services include, but are not limited to:

(a) Any healthcare service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services ~~((and supplies))~~, not specifically allowed under WAC 388-531-0100(4).

(e) Discography;

~~((f))~~ (f) Ear or other body piercing;

~~((g))~~ (g) Face lifts or other facial cosmetic enhancements;

~~((g))~~ Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related services, supplies, or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;)

(h) ~~((Hair transplants, epilation (hair removal), and electrolysis;~~

~~((i))~~ Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

~~((i))~~ (i) Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

~~((k))~~ (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((m))~~ (m) Nonmedical equipment;

~~((m))~~ (n) Penile implants;

~~((n))~~ (o) Prosthetic testicles;

~~((o))~~ (p) Psychiatric sleep therapy;

~~((p))~~ (q) Subcutaneous injection filling;

~~((q))~~ (r) Tattoo removal;

~~((r))~~ (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities; ~~((and))~~

~~((s))~~ (t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - new or used vehicle.

(5) For a specific list ~~((ing))~~ of noncovered healthcare services in the following service categories, refer to the ~~((accompanying))~~ WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in ~~((WAC 388-546-0250))~~ chapter 388-546 WAC;

(b) Dental services ~~((for))~~ clients twenty ~~((one))~~ years of age and younger ~~((r))~~ as described in chapter 388-535 WAC;

(c) Dental services ~~((for))~~ clients twenty-one years of age and older ~~((r))~~ as described in chapter 388-535 WAC;

(d) Durable medical equipment as described in ~~((WAC 388-543-1300))~~ chapter 388-543 WAC;

(e) Hearing care services as described in ~~((WAC 388-544-1400))~~ chapter 388-547 WAC;

(f) Home health services as described in WAC 388-551-2130;

(g) Hospital services as described in WAC 388-550-1600;

(h) Physician-related services as described in WAC 388-531-0150;

(i) Prescription drugs as described in ~~((WAC 388-530-1150))~~ chapter 388-530 WAC; and

(j) Vision care services as described in ~~((WAC 388-544-0475))~~ chapter 388-544 WAC.

(6) A client has a right to request an administrative hearing ~~((when a service is denied as noncovered)), if one is available under state and federal law.~~ When the department denies all or part of a request for a noncovered healthcare service(s) ~~((or equipment))~~, the department sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the department intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the department's action was taken; and

(ii) Prepare a response to the department's decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) ~~((The client's))~~ Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgement that a client may be represented at the hearing by legal counsel or other representative;

(iv) ~~((Upon the client's request, the name and address of the nearest legal services office;~~

~~((v))~~ Instructions on how to request an exception to rule (ETR); ~~((and))~~

~~((v))~~ (v) Information regarding department-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

NEW SECTION

WAC 388-501-0163 Healthcare coverage—Process for submitting a valid request for authorization. (1) The department requires providers to obtain authorization for certain healthcare services in accordance with this section, chapters 388-501 and 388-502 WAC, other applicable department rules, current published department billing instructions, and/or numbered memoranda. For the purposes of this section, healthcare services include treatment, equipment, related supplies, and drugs.

(a) For healthcare services that require prior authorization (PA), a provider (as defined in WAC 388-500-0005) must submit a written, electronic, or telephonic request to the department. To be a valid request for prior authorization, the provider must submit the request and conform to the department's current published program billing instructions, numbered memoranda, and any additional requirements in Washington Administrative Code (WAC) and/or Revised Code of Washington (RCW).

(b) For expedited prior authorization (EPA), a provider must certify that the client's clinical condition meets the appropriate EPA criteria outlined in the department's current published program billing instructions, numbered memoranda, and any additional requirements in WAC and/or RCW. The provider must use the department-assigned EPA number when submitting a claim for payment to the department.

(c) The department requires prior authorization for covered healthcare services when the applicable expedited prior authorization criteria are not met.

(d) Upon request, a provider must submit documentation to the department showing how the client's condition meets the required criteria for PA or EPA.

(2) Department authorization requirements for covered healthcare services are not a denial of service.

(3) The department returns invalid requests to the provider and takes no further action unless the request for authorization is resubmitted. The return of an invalid request is not a denial of service.

(4) Failure of a provider to request authorization for a healthcare service that requires it or a provider's failure to do so properly is not a denial of service.

(5) The department's authorization of healthcare service(s) does not guarantee payment. See WAC 388-501-0050 for other general requirements that must be satisfied before payment can be made for a healthcare service requested and authorized under this section.

(6) The department evaluates a request for an authorization of a healthcare service that exceeds identified limitations, on a case-by-case basis and in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines the healthcare ser-

vice was not properly authorized or did not meet EPA criteria. Refer to chapters 388-502 and 388-502A WAC.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-501-0169 Healthcare coverage—Limitation extension. This section addresses requests for limitation extensions (~~((additional covered services when a client has received the maximum services allowed under specific healthcare program rules))~~) regarding scope, amount, duration and/or frequency of a covered healthcare service. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. The department does not authorize or pay for any covered healthcare services exceeding (~~(the maximum allowed until)~~) identified limitations unless authorization is obtained prior to client receiving the service.

(1) No limitation extension of covered healthcare services will be authorized when prohibited by specific program rules.

(2) When (~~((a))~~) a limitation extension is not prohibited by specific program rules, (~~(a client or)~~) the client's provider may request a limitation extension.

(3) (~~(Under fee-for-service (FFS).))~~) The department evaluates requests for limitation extensions (~~((using))~~) as follows:

(a) For a fee-for-service client, the process described in WAC 388-501-0165.

(b) For a managed care enrollee, the client's managed care organization (MCO) evaluates requests for limitation extensions according to the MCO's prior authorization process.

(~~((4))~~) ~~In addition to subsection (3),~~ (c) Both the department and MCO consider the following in evaluating a request for a limitation extension:

(~~((a))~~) (i) The level of improvement the client has shown to date related to the requested healthcare service and the reasonably calculated probability of continued improvement if the requested healthcare service is extended; and

(~~((b))~~) (ii) The reasonably calculated probability the client's condition will worsen if the requested healthcare service is not extended.

WSR 09-23-119

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed November 18, 2009, 10:52 a.m., effective December 19, 2009]

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

Purpose: The purpose of chapter 246-272C WAC, On-site sewage system tanks, is to establish sewage tank design and construction requirements; establish the review and approval process; and create a prefabricated sewage tank registry. This proposed rule protects public health by making certain department of health reviews and approves the sewage tank design and construction plan before the tank is used as part of an on-site sewage system design.

Statutory Authority for Adoption: RCW 43.20.050 (2) and (3).

Adopted under notice filed as WSR 09-18-123 on September 2, 2009.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 246-272C-0001, title changed from "Authority, purpose, and objectives" to "Purpose and objectives" because there is no subtitle of "authority" in the section.
- WAC 246-272C-0120 (3)(c), amend to read "Bill the applicant for any applicable fees; and" and WAC 246-272C-0120 (3)(d), we changed "required" to "applicable." The subsection now reads "Upon receipt of payment of any applicable fees..."
- WAC 246-272C-0130 (5)(e), amend to read "Pay any applicable fees."
- WAC 246-272C-0130 (5)(f), delete subsection and move "and" from end of 246-272C-130 (5)(e), to end of 246-272C-130 (5)(d).
- WAC 246-272C-0140 (3)(c), amend to read "Any applicable fee payment, which may include a late fee."
- WAC 246-272C-0210(6), delete introductory phrase for second sentence "To ensure the entire on-site sewage system is watertight," because the drainfield part of the system is not supposed to be watertight. Add "require" to clarify the second sentence. The department or local health officers do not usually perform the actual water-tightness test. The second sentence reads, "The department and local health officers are encouraged to require testing sewage tanks in the field at installation."
- WAC 246-272C-0220 (1)(a), amend to read "The capacity of the first compartment must accommodate at least one half..."
- WAC 246-272C-0220 (1)(b), amend to read, "The capacity of the second compartment must accommodate the remaining..."
- WAC 246-272C-0230 (1)(a), amend to read "The capacity of the first compartment must accommodate at least one half..."
- WAC 246-272C-0230 (1)(b), amend to read "The capacity of the second compartment must accommodate the remaining..." and
- WAC 246-272C-0520 (2)(c), amend to read "Denial, suspension, modification, or revocation of approvals or tank registrations."

A final cost-benefit analysis is available by contacting Melissa McEachron, Department of Health, P.O. Box 47824, Olympia, WA 98504-7824, phone (360) 236-3265, fax (360) 236-2257, e-mail melissa.mceachron@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 22, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, 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 22, Amended 0, Repealed 0.

Date Adopted: October 14, 2009.

Craig McLaughlin
Executive Director

Chapter 246-272C WAC

ON-SITE SEWAGE SYSTEM TANKS

PURPOSE AND ADMINISTRATION

NEW SECTION

WAC 246-272C-0001 Purpose and objectives. (1) **Purpose.** The purpose of this chapter is to protect public health and safety by assuring proper design and construction of all tanks used in on-site sewage systems. Proper sewage tank design and construction will help prevent:

(a) Surface or ground water leaking into tanks and adversely impacting the treatment and dispersal functions of system components; and

(b) Sewage from tanks leaking into the soil and adversely impacting ground water or surface water, or causing sewage to surface on the ground.

(2) **Objectives.** This chapter establishes requirements and provides measures to achieve effective long-term sewage treatment and limit the discharge of contaminants to waters of the state. The objectives include:

(a) Establishing design and construction standards;

(b) Requiring department review and approval of design and construction plans for prefabricated tanks and cast-in-place tanks; and

(c) Creating a process to register prefabricated tank sizes and models built from approved design and construction plans.

NEW SECTION

WAC 246-272C-0005 Administration. The department shall administer this chapter under the authority and requirements of chapter 43.70 RCW. The local health officers shall administer portions of this chapter related to on-site sewage systems with design flows of less than three thousand five hundred gallons per day, as described in chapter 70.05 RCW.

NEW SECTION

WAC 246-272C-0010 Applicability and relationship to other rules. (1) This chapter applies to all prefabricated tanks and all cast-in-place tanks. This chapter establishes sewage tank design and construction requirements, plan

review and approval requirements, and prefabricated tank registration requirements.

(2) This chapter contains specific requirements for:

- (a) Manufacturers of prefabricated tanks and builders of cast-in-place tanks;
- (b) Persons designing sewage tanks;
- (c) The department for reviewing, registering, and approving sewage tank design and construction plans;
- (d) Persons installing sewage tanks; and
- (e) The local health officer and the department for approving on-site sewage system designs, plans, specifications, and installations under chapters 246-272A and 246-272B WAC.

(3) This chapter does not contain all requirements for on-site sewage systems. Additional requirements for on-site sewage systems, including maintenance requirements, are found in chapters 246-272A and 246-272B WAC.

(4) This chapter does not apply to:

- (a) Facilities regulated by the department of ecology;
- (b) Reclaimed water systems as described in chapter 90.46 RCW;
- (c) Tanks used to store municipal sewage sludge regulated as biosolids under chapter 173-308 WAC; or
- (d) Geomembrane containment vessels for public domain treatment technologies. An example of this excluded technology is PVC containment vessels for public domain packed bed filters.

NEW SECTION

WAC 246-272C-0020 Definitions. (1) **"AASHTO"** means American Association of State and Highway Transportation Officials.

(2) **"Approved"** means a written statement of acceptability issued by the department of health or the local health officer.

(3) **"Baffle"** means a device placed in a sewage tank for multiple functions, including dissipating energy, directing solids, retaining solids, and drawing liquid off at a specific depth. A baffle is not an intercompartmental wall.

(4) **"Cast-in-place tank"** means a sewage tank specifically designed for and constructed at the location where it will be used.

(5) **"Department"** means the Washington state department of health.

(6) **"Designer"** means a person who matches site and soil characteristics with appropriate on-site sewage technology. Throughout this chapter this term applies to on-site wastewater treatment system designers licensed under chapter 18.210 RCW.

(7) **"Design engineer"** as used in this chapter, means a professional engineer who is experienced and qualified in the analysis and design of on-site wastewater treatment systems or wastewater treatment system components, and is either licensed in Washington in accordance with chapter 18.43 RCW or is licensed in another state and an exception specified in RCW 18.43.130 applies. If the sewage tank is considered a "significant structure," as defined in chapter 18.43 RCW, the design engineer shall be licensed as a structural

engineer unless an exception specified in RCW 18.43.040 applies.

(8) **"Effluent"** means liquid discharged from a sewage tank or other on-site sewage system component.

(9) **"Grey water"** means domestic type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Grey water does not include flow from a toilet or urinal.

(10) **"Grease interceptor tank"** means a watertight tank similar in design to a septic tank receiving grey water that may contain grease, such as from food service establishments. The interceptor tank is designed and constructed to permit adequate separation of grease from the rest of the sewage prior to discharge into an approved sewage treatment and disposal or dispersal system.

(11) **"Holding tank"** means a sewage tank that is a component of an on-site sewage system designed to receive and temporarily store sewage from one or more facilities or dwellings for removal, dispersal, and ultimate disposal of the sewage at another location.

(12) **"Holding tank sewage system"** means an on-site sewage system that uses a holding tank, the services of a septic pumper, and off-site treatment and disposal of the sewage generated.

(13) **"Installer"** means a person approved by the local health officer to install on-site sewage systems or components, or as defined in chapter 246-272B WAC.

(14) **"Local health officer"** means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or his or her designee appointed by the local board of health.

(15) **"On-site sewage system"** means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component.

(16) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(17) **"Prefabricated tank"** means a sewage tank that is manufactured off-site and delivered to the site for installation.

(18) **"Pump tank"** means a tank that contains pumping or dosing equipment.

(19) **"Septage"** means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other on-site sewage system components.

(20) **"Septic pumper"** means a person approved by the local health officer to remove and transport sewage or septage from on-site sewage systems.

(21) **"Septic tank"** means a watertight treatment receptacle receiving the discharge of sewage from a building sewer or sewers; designed and constructed to permit separation of

settleable and floating solids from the liquid, and detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

(22) "**Sewage**" means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places.

(23) "**Sewage tank**" means a watertight prefabricated or cast-in-place septic tank, pump tank, holding tank, grease interceptor tank, recirculating filter tank, a tank used with a proprietary product, and any other tank used in an on-site sewage system. This term also includes tanks used in a septic tank effluent pump or vacuum collection/transmission system for an on-site sewage system.

(24) "**Trash tank**" means a type of sewage tank that removes material from sewage that microorganisms cannot degrade before the sewage enters a chamber where decomposition occurs.

(25) "**Watertight**" means liquids are prevented from entering or escaping except through designed openings such as inlets, outlets, intercompartmental wall fittings or baffles.

SEWAGE TANK APPROVALS AND REGISTERED LIST REQUIREMENTS

NEW SECTION

WAC 246-272C-0110 General requirements. (1) The department shall review and approve all sewage tank design and construction plans.

(2) Prefabricated tank models and sizes built from approved design and construction plans must be registered with the department.

(3) Cast-in-place tanks are project specific and must be constructed using a design and construction plan approved by the department.

(4) Designers and design engineers shall specify only prefabricated tanks registered with the department or a cast-in-place tank approved by the department in their on-site sewage system designs, plans, and specifications.

(5) Installers shall install only prefabricated tanks registered with the department or construct only cast-in-place tanks that the department has reviewed and approved.

(6) A manufacturer or agent shall sell only prefabricated tanks registered with the department in Washington.

(7) Local health officers and the department shall approve only on-site sewage system designs and installations specifying either a prefabricated tank registered with the department or a cast-in-place tank approved by the department.

NEW SECTION

WAC 246-272C-0120 Application process for sewage tank design and construction plan approval. (1) An applicant for sewage tank design and construction plan approval shall apply to the department by submitting a completed application in the format required by the department. For required sewage tank application information, see WAC 246-272C-0125.

(2) When the department receives an application, the department shall:

(a) Review applications in the order received;

(b) Verify the application is complete and includes any applicable fee;

(c) Return any incomplete application;

(d) Provide the applicant with an approximate date the department expects to complete the review; and

(e) Review and evaluate the design and construction plans and all information submitted to determine whether all applicable requirements are met.

(3) If the department determines the sewage tank design and construction plan meets all applicable requirements, the department shall:

(a) Approve the application and the sewage tank design and construction plan;

(b) Notify the applicant of the department's decision in writing;

(c) Bill the applicant for any applicable fees; and

(d) Upon receipt of payment of any applicable fees:

(i) Place the specific prefabricated tank model number, size, and manufacturer information on the sewage tank registered list; or

(ii) Authorize construction of the cast-in-place tanks.

(4) If the department determines the tank design and construction plans do not meet all applicable requirements, the department shall:

(a) Deny the application; and

(b) Notify the applicant of the department's decision in writing stating the specific reasons for the denial.

NEW SECTION

WAC 246-272C-0125 Required application information. (1) **Prefabricated tanks:** The application for prefabricated tank design and construction approval must include the information listed in Table 1.

Table 1—Required Application Information

| | |
|---|---|
| (a) Manufacturer information: | (i) Manufacturer's name; (ii) Mailing address; (iii) Street address; (iv) Phone number; and (v) E-mail address. |
| (b) Manufacturer's authorized contact information: | (i) Name of the manufacturer's authorized contact; (ii) Mailing address; (iii) Street address; (iv) Phone number; and (v) E-mail address. |
| (c) If there is an agent, manufacturer's agent information: | (i) Name of the manufacturer's agent; (ii) Mailing address; (iii) Street address; (iv) Phone number; (v) E-mail address; and |

| | |
|--|---|
| | (vi) A signed and dated statement from the agent verifying agent status. The statement must include the following: "I certify that I represent (insert manufacturing company name) and I am authorized to prepare or direct the preparation of this application for registration. I attest, under penalty of law, that this document and all attachments are true, accurate, and complete." |
| (d) Water-tightness certification: | A signed and dated statement from the manufacturer or agent certifying their sewage tank is watertight at the point of manufacturing. The certification must include: (i) A description of the test method and identification of the person performing the test; or (ii) The facility certification from National Precast Concrete Association testing. |
| (e) A full set of design drawings with supporting calculations: | (i) Design drawings stamped by the design engineer. (ii) The design drawings meeting all the requirements in WAC 246-272C-0200. |
| (f) Installation instructions. | |
| (g) A description of the function of the sewage tank along with any known limitation on its use. | |
| (h) A design engineer's certification: | A signed and dated statement from the design engineer submitted with the design documents certifying the tank meets all standards and requirements in WAC 246-272C-0200 through 246-272C-0250. |
| (i) Proprietary product manufacturer statement, if the tank is used with a proprietary product listed with the department: | A signed and dated statement from the proprietary product manufacturer: (i) Identifying the proprietary product model number; and (ii) Stating the tank drawings were reviewed and found acceptable for use with the specified proprietary product. |
| (j) Payment of all applicable fees. | |

(2) **Cast-in-place tank:** The application for cast-in-place tank design and construction plan approval must include the following information:

- (a) Design drawings and supporting calculations stamped by a design engineer;
- (b) All tank design load limits including maximum traffic loading and earth loading;
- (c) Specific excavation, compaction, bedding, tank construction, and backfill requirements;
- (d) A signed and dated statement from the design engineer submitted with the design documents certifying the tank meets all standards and requirements of WAC 246-272C-0200 through 246-272C-0250; and
- (e) A signed and dated statement from the proprietary product manufacturer identifying the proprietary product model number, and stating the tank drawings were reviewed

and found acceptable for use with the specified proprietary product.

NEW SECTION

WAC 246-272C-0130 Sewage tanks registered list requirements—Prefabricated tanks. (1) Prefabricated tank registration expires on December 31st of the third year following initial registration.

(2) The department shall create and maintain the sewage tank registered list of prefabricated tanks built from approved design and construction plans including, but not limited to, the following:

- (a) Model numbers;
- (b) Tank sizes; and
- (c) Manufacturer information.

(3) The department shall update the sewage tank registered list at least annually, adding and removing prefabricated tank information as necessary to keep the list current.

(4) The department may remove prefabricated tanks from the sewage tank registered list if the department determines:

- (a) The prefabricated tank design and construction plans are changed to the extent a new application is required;
- (b) The manufacturer or agent fails to pay applicable registration fees;
- (c) The manufacturer or agent fails to renew registration pursuant to the requirements of WAC 246-272C-0140; or
- (d) There are problems with the prefabricated tank, including, but not limited to:

- (i) Noncompliance with the approved design and construction plan; or
- (ii) Structural failure not adequately addressed by the manufacturer or design engineer.

(5) A manufacturer or agent with prefabricated tanks on the sewage tank registered list shall:

- (a) Notify the department in writing of changes in contact information between registration renewal periods;
- (b) Notify the department in writing of changes to the design and construction of a registered tank;
- (c) Submit updated prefabricated tank design and construction plans for department review and approval when required by the department;
- (d) Reapply by submitting a complete application to the department according to the registration requirements of WAC 246-272C-0120 each time a design change is made that materially affects the integrity of the prefabricated tank or the tank's performance; and
- (e) Pay any applicable fees.

NEW SECTION

WAC 246-272C-0140 Sewage tank registered list renewals. (1) All prefabricated tank renewal registrations expire on December 31st of the third year of registration.

(2) All prefabricated tank renewal applications must be received by the department no later than October 31st of the year the registration expires.

(3) An applicant may apply for a prefabricated tank registration renewal with the department by submitting:

(a) A completed and signed renewal application in the format required by the department;

(b) A signed certification fully describing all changes that occurred over the last three years and verifying that none of the changes materially affect the integrity of the sewage tank or the sewage tank's performance; and

(c) Any applicable fee payment, which may include a late fee.

(4) As part of the prefabricated tank registration renewal process:

(a) The department shall consider data or comments on tank performance from local health officers, utilities, or other sewage tank users received by October 31st of the year the registration expires. These comments may include concerns about a variety of issues such as product function, product reliability, and problems arising with operation and maintenance;

(b) The department shall notify the manufacturer or agent of comments received; and

(c) The manufacturer shall respond to comments within thirty days of receipt.

(5) The department shall review the prefabricated tank renewal application and provide comments to the manufacturer within sixty days of receipt.

(6) Once reviewed, the department shall approve the renewal application except when:

(a) The department does not receive a completed renewal application by December 31st, the department shall remove the affected sewage tank model number, size, and other information from the registered list no earlier than sixty days after the expiration date.

(b) The manufacturer does not submit information in response to comments;

(c) The department determines the information provided by the manufacturer does not satisfactorily address comments; or

(d) Changes to the design and construction plans materially affect the integrity of the sewage tank, its performance, or differ substantially from the original approval.

(7) Sewage tank model and size removed from the sewage tank registered list are no longer eligible for:

(a) The registered list renewal process;

(b) Sale in Washington; and

(c) Installation in Washington.

(8) A manufacturer or agent who fails to renew a prefabricated tank registration according to the requirements of this section may reapply for registration following the registration requirements in WAC 246-272C-0120.

NEW SECTION

WAC 246-272C-0150 Transition from the approved on-site sewage tanks list to the sewage tank registered list.

(1) The department shall phase-out the approved on-site sewage tanks list and switch to the sewage tank registered list described in WAC 246-272C-0130.

(a) After December 31, 2009, no sewage tank information will be added to the approved on-site sewage tanks list.

(b) The approved on-site sewage tanks list remains in effect through December 31, 2011.

(2) Between January 1, 2010, and December 31, 2011, the department or local health officer may allow the use of prefabricated tanks from either list.

(3) Manufacturers may submit applications pursuant to the registration requirements in WAC 246-272C-0120 starting January 1, 2010. Applications submitted to the department no later than July 1, 2011, will be reviewed, and if approved, included on the sewage tank registered list by January 1, 2012.

(4) Starting January 1, 2012, a prefabricated tank manufacturer or agent shall comply with the registration requirements of WAC 246-272C-0130.

(5) Starting January 1, 2012, the department or local health officer shall allow use of only prefabricated tanks from the sewage tank registered list.

NEW SECTION

WAC 246-272C-0160 Post-construction cast-in-place tank requirements. If the department approves the design and construction plan and authorizes construction, the design engineer shall:

(1) Conduct a post-construction inspection of the completed cast-in-place tank;

(2) Verify all applicable requirements were satisfied;

(3) Verify all excavation, backfill, and compaction conform to the project's approved design and construction plan and specifications; and

(4) Verify construction is complete and submit a construction certification to the department prior to use.

DESIGN AND CONSTRUCTION REQUIREMENTS

NEW SECTION

WAC 246-272C-0200 Design drawing requirements for sewage tanks. (1) The design engineer shall submit calculations to the department that demonstrate the tank withstands all structural, hydraulic, hydrostatic, earth, and any anticipated traffic loads, including, but not limited to, those loads specified in WAC 246-272C-0210. The drawings must specify and show in an obvious place the tank design load limits, including the maximum traffic loading and earth loading.

(2) Drawings of the sewage tank must be complete and show all dimensions, capacities, reinforcement, structural calculations, and other data requested by the department. The drawings must be drawn to scale and show:

(a) A side section view of the tank with details on inlets, outlets, and any intercompartmental devices;

(b) Material specifications;

(c) A plan and side section view of the tank showing the dimensions, including thickness of various portions of the tank;

(d) Reinforcement details;

(e) The size and location of all inspection and maintenance access, and inlet and outlet openings in the tank;

(f) The number of compartments;

(g) The liquid capacity of each compartment in the tank; and

(h) The excavation, backfill, compaction, depth of bury, bedding and installation requirements.

NEW SECTION

WAC 246-272C-0210 General design and construction requirements—Sewage tanks. (1) **Sewage tank loads.** Sewage tanks must be designed and constructed to withstand all structural, hydraulic, hydrostatic, earth loads, and any anticipated traffic loads. They must be designed and constructed so they:

(a) Do not collapse, deform, or crack when subjected to the anticipated loads when the tanks are either full or empty;

(b) Support a dead load equivalent to at least three feet of earth cover with a unit density of at least 110 lb/ft³ and a 2,500 lb_f/wheel load concentration over the critical elements of the tank. Tanks installed with more than three feet of earth cover must be reinforced to support the additional load;

(c) Account for minimum hydrostatic load of 62.4 lbs/ft³ and support earth backfill and hydrostatic pressures. Minimum lateral load calculations must include pressures due to effective weight of adjacent earth backfill and hydrostatic loads assuming the water table is at ground level;

(d) Allow for septage pumping during high ground water conditions. Internal hydrostatic pressures must be included in the calculations to allow for septage pumping during high ground water conditions assuming a water table is at ground level;

(e) Counteract buoyancy effects, assuring an adequate flotation safety factor in high ground water areas. The design engineer shall submit to the department calculations to demonstrate the tank's ability to counteract buoyancy effects and include this information as part of the sewage tank installation instructions; and

(f) Withstand a wheel load of 16,000 lb_f/wheel with fourteen feet axle spacing consistent with a HS20-44 loading as designated by AASHTO, if designed as a "traffic bearing tank."

(2) **Construction materials.** Sewage tanks must be designed and constructed of solid, durable and watertight materials that do not corrode or decay. Steel sewage tanks are prohibited. Acceptable materials include:

(a) Concrete for cast-in-place tanks; and

(b) Concrete, fiberglass, polyethylene or other solid, durable, watertight material that does not corrode or decay for prefabricated tanks.

(3) **Connections and components.** Sewage tanks must be designed and constructed using structurally sound and watertight access connections or components, either into the tank or through the tank's walls. Sewage tank connections and related components include:

(a) Inlet and outlet fixtures;

(b) Electrical conduits; and

(c) Access ports, inspection ports, and risers.

(4) **Inlets, outlets, and intercompartmental fittings or baffles.**

(a) Sewage tank inlets, outlets, and intercompartmental fittings must:

(i) Provide effective scum storage and sludge retention; and

(ii) Be constructed of a durable material and attached to the walls of the tank in a secure and corrosion resistant fashion.

(b) All inlet and outlet devices must have sanitary tees constructed of:

(i) PVC conforming to or exceeding the requirements of ASTM D 3034; or

(ii) ABS conforming to or exceeding the requirements of ASTM D 2680.

(c) All sanitary tees must have a minimum of four inches inside diameter. For a larger capacity tank, the diameter must be greater to accommodate the design flow.

(d) Concrete baffles are allowed if cast with the tank pour. Concrete baffles installed after the tank has been poured are not allowed.

(5) **Seals and gaskets.** Seals and gaskets for inlet, outlet, and intercompartmental fittings must be resilient, watertight, corrosion-resistant, and flexible. Seals meeting ASTM C-1644, or equivalent must be used to join the tank wall and the PVC piping to prevent leakage at the wall connection.

(6) **Water-tightness.** Sewage tanks must be watertight and prevent surface drainage and ground water from entering into the tank or connected chambers. The department and local health officers are encouraged to require testing sewage tanks in the field at installation.

(7) **Air space and venting.** Sewage tanks must provide air space to allow gases to vent through the main building sewer vent or other plumbing vent stacks to the atmosphere.

(a) Air space must be above the liquid surface in the tank back and through the tank's inlet.

(b) Sewage tanks must maintain at least a one-inch air space between the underside of the top of the tank and the top of any of the inlet, outlet, or intercompartmental fitting to vent gases.

(c) Sewage tanks that do not adequately vent through the building plumbing vent stacks must:

(i) Use a carbon-filtered vent above the ground surface; or

(ii) Bury the end of the vent in a gravel trench in a manner adequate to prevent infiltration from ground water or surface water.

(d) Use another sewage tank venting method approved by the department according to the requirements under WAC 246-272C-0500.

(8) **Confined space.** Designs must take into account whether the space is a confined space. Confined spaces must comply with the department of labor and industries' requirements in chapter 296-809 WAC, Confined spaces.

(9) **Forms or processes.** Manufacturers of prefabricated tanks may use any form or process to construct the tank, provided the tank meets or exceeds the standards and requirements in this section through WAC 246-272C-0250.

(10) **Coatings.** Coatings, sealants or liners may be added to the inside or outside of the sewage tanks to enhance corrosion protection and water-tightness of the tanks. All coatings, sealants, or liners must be rated and warranted by the manufacturer for use with sewage or sewage effluent.

(11) **Access openings and risers.** Access openings must be large enough for a person with equipment to easily clean, maintain, remove, and replace sewage tank components.

(a) The minimum diameter of the sewage tank opening must be:

(i) Eighteen inches for tanks with a liquid volume of less than or equal to two thousand gallons; and

(ii) Twenty inches for tanks with a liquid volume greater than two thousand gallons.

(b) Maximum distance between access points on a tank must be ten feet center-to-center.

(c) Access openings must be located above the inlet and the outlet.

(d) Access openings must be located directly above any pumping or dosing equipment, or effluent screen or filter.

(e) Risers must be a minimum of twenty-three inches in diameter.

(f) Connection of the riser to the tank and the connection of additional riser sections must incorporate joint grooves or adapters to prevent lateral movement and to remain water-tight.

(g) Access and riser openings must be covered with a lockable lid or other type of secured lid to prevent unauthorized entry.

(h) Access risers and lids must be structurally sound to withstand the anticipated site-specific load conditions of the riser.

NEW SECTION

WAC 246-272C-0220 Additional requirements for septic tanks. (1) **Septic tank compartments.** Septic tanks must be designed and constructed with a minimum of two compartments. This standard may be met by one tank with two compartments or by two single compartment tanks in series.

(a) The capacity of the first compartment must accommodate at least one half but no more than two thirds of the total required liquid volume; and

(b) The capacity of the second compartment must accommodate the remaining total required liquid volume.

(2) **Septic tank inlets.** Septic tank inlets must meet the following:

(a) The inlet sanitary tee or baffle extends at least eight inches downward below the liquid level;

(b) The inlet sanitary tee or baffle extends above the liquid surface at least to the crown of the inlet pipe; and

(c) The invert of the inlet pipe is a minimum of two inches above the invert of the tank outlet.

(3) **Septic tank outlets.** Septic tank outlets must meet the following:

(a) The outlet sanitary tee or baffle extends below the liquid level at least thirty percent, but not more than forty percent of the liquid depth for tanks with straight vertical sides;

(b) The outlet sanitary tee or baffle extends below the liquid level at least twenty-five percent, but not more than thirty-five percent of the liquid depth in horizontal cylindrical tanks; and

(c) The outlet sanitary tee extends sufficiently to allow scum storage and venting, and to a point not less than one inch from the underside of the top of the tank. The outlet tee may extend into the riser for venting.

(4) **Septic tank effluent screens or filters.** Septic tanks must be designed and constructed to accommodate effluent screening devices or filters. The department and local health officers are encouraged to evaluate effluent screen or filter use on a case-by-case basis during the on-site sewage system design phase. Specific effluent screen or filter criteria or requirements, if any, are included under chapter 246-272A or 246-272B WAC.

(5) **Septic tank intercompartmental wall fittings.**

(a) The septic tank must have intercompartmental wall fittings that extend below the liquid level at least:

(i) Thirty percent, but not more than forty percent of the liquid depth for tanks with straight vertical sides; or

(ii) Twenty-five percent, but not more than thirty-five percent of the liquid depth in horizontal cylindrical tanks.

(b) Slots or ports may be used as intercompartmental fittings.

(i) The location of the slot or port must be at the same depth as the bottom of outlet tees or baffles; and

(ii) The opening must have a minimum area of twelve square inches with a minimum vertical dimension of three inches.

(6) **Septic tank intercompartmental walls.** The septic tank must have intercompartmental walls that:

(a) Restrict solids from moving from one compartment to the other except through the intercompartmental wall fittings; and

(b) Withstand pumping of the adjacent compartment without risking structural damage or functional failure.

(7) **Septic tank scum storage.** The septic tank must allow air space volume for scum storage of at least ten percent of the liquid volume of the tank. The department may approve an increase or decrease in the air space requirements according to the requirements under WAC 246-272C-0500.

(8) **Septic tank length to width ratio.**

(a) The length of a septic tank with a liquid capacity less than three thousand gallons must be a minimum of 1.25 times the width.

(b) The length of septic tanks with a liquid capacity greater than or equal to three thousand gallons must be a minimum of 1.5 times the width.

(9) **Septic tank liquid capacity depth.** Septic tanks must contain a liquid depth of not less than three feet.

NEW SECTION

WAC 246-272C-0230 Additional requirements for grease interceptor tanks. (1) **Grease interceptor compartments.** Grease interceptor tanks must be designed and constructed with a minimum of two compartments. This standard may be met by one tank with two compartments or by two single compartment tanks in series.

(a) The capacity of the first compartment must accommodate at least one half but no more than two thirds the total required liquid volume; and

(b) The capacity of the second compartment must accommodate the remaining total required liquid volume.

(2) **Grease interceptor inlets.** Grease interceptors must have inlets that meet the following:

(a) The sanitary tee or baffle must extend into the liquid a distance within eighteen inches from the bottom of the tank;

(b) The sanitary tee or baffle must extend above the liquid surface at least to the crown of the inlet pipe; and

(c) The invert of the inlet pipe must be a minimum of two inches above the invert of the tank outlet.

(3) **Grease interceptor outlets.** Grease interceptors must have outlets that provide for adequate grease storage and the outlet sanitary tee or baffle must extend:

(a) Into the liquid to a point between six inches and twelve inches from the bottom of the tank; and

(b) Above the liquid level sufficiently to allow scum storage and venting, and to a point not less than one inch from the underside of the top of the tank. The outlet tee may extend into the riser for venting.

(4) **Grease interceptor intercompartmental wall fittings.**

(a) All grease interceptor intercompartmental wall fittings must extend into the liquid to a point between six inches and twelve inches from the bottom of the tank.

(b) If slots or ports are used as intercompartmental fittings:

(i) The location of the slot or port must be at the same depth as the bottom of outlet tees or baffles; and

(ii) The opening must have a minimum area of twelve square inches with a minimum vertical dimension of three inches.

(5) **Grease interceptor intercompartmental walls.** Grease interceptor intercompartmental walls must:

(a) Restrict solids from moving from one compartment to the other except through the intercompartmental wall fittings; and

(b) Withstand pumping of the adjacent compartment without risking structural damage or functional failure.

(6) **Grease interceptor tank liquid depth.** Grease interceptor tanks must contain a liquid depth of not less than three feet.

NEW SECTION

WAC 246-272C-0240 Additional requirements for pump tanks. (1) A sanitary tee or baffle is required when effluent is pumped into the pump tank.

(2) The sanitary tee or baffle for a pump tank must meet the following requirements:

(a) The inlet sanitary tee or baffle must be installed on the inlet of the pump tank; and

(b) The inlet sanitary tee or baffle must extend into the tank a minimum of eight inches below the invert elevation of the inlet pipe.

NEW SECTION

WAC 246-272C-0245 Additional requirements for trash tanks. (1) Trash tanks must be designed and constructed for use as a pretreatment tank or compartment.

(2) Trash tank volume must not be used as part of the calculations of the required septic tank volume.

NEW SECTION

WAC 246-272C-0250 Identification. Manufacturers shall permanently identify each sewage tank. The manufacturer shall display the following information on the top of each tank near the inlet end of the tank or inside the riser if the riser is cast in the tank:

(1) Manufacturer name or logo;

(2) The tank's liquid capacity in gallons;

(3) Maximum burial depth;

(4) The date manufactured or constructed; and

(5) The tank model number or serial number, if available.

WAIVERS, COMPLIANCE, AND ENFORCEMENT

NEW SECTION

WAC 246-272C-0500 Waiver of state regulations. (1) The manufacturer or agent, or the design engineer may request a waiver in writing, stating the reason for the waiver.

(2) The department may grant a waiver request if it is consistent with the applicable standards and intent of these rules.

(3) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

(4) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial.

NEW SECTION

WAC 246-272C-0520 Enforcement. (1) The department shall enforce the provisions of this chapter.

(2) When a person violates the provisions under this chapter, the department or office of the attorney general may initiate enforcement or disciplinary actions, or any other legal proceeding authorized by law including, but not limited to, any one or a combination of the following:

(a) Informal administrative conferences, convened at the request of the department or tank manufacturer, to explore facts and resolve problems;

(b) Orders directed to the tank manufacturer or person causing or responsible for the violation of this chapter;

(c) Denial, suspension, modification, or revocation of approvals or tank registration;

(d) The penalties under RCW 43.70.190; and

(e) Civil or criminal action.

(3) Orders authorized under this section include the following:

(a) Orders requiring corrective measures; and

(b) Orders to stop work or to stop sales of sewage tanks until the manufacturer obtains all certifications and approvals required by rule or statute.

(4) Enforcement orders issued under this section must:

(a) Be in writing;

(b) Name the person or persons to whom the order is directed;

(c) Briefly describe each action or inaction constituting the violation and the rule or statutory citation;

(d) Specify any required corrective action, if applicable;
 (e) Specify the effective date of the order, with a timeline of compliance;

(f) Provide notice of the consequences of failure to comply or repeated violation, as appropriate;

(g) Provide the name, business address, and phone number of the department staff person who may be contacted regarding an order.

(5) Enforcement orders issued under this section may include a statement that continued or repeated violation may subject the violator to:

(a) Denial, suspension, or revocation of approval or registration;

(b) Referral to the office of attorney general; or

(c) Other appropriate remedies.

(6) Enforcement orders must be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.

(7) The department shall have cause to deny the application or reapplication, or to revoke, suspend, or modify registrations or approvals of any person who:

(a) Fails or refuses to comply with the provisions of this chapter, or any other statutory provision;

(b) Obtains or attempts to obtain a required certificate or approval by fraud or misrepresentation; or

(c) Manufactures or constructs a tank which structurally fails or collapses.

NEW SECTION

WAC 246-272C-0540 Notice of decision—Adjudicative proceeding. (1) The department shall provide notice of the denial, suspension, modification, or revocation of a registration, certification, or approval consistent with RCW 43.70.115, chapters 34.05 RCW and 246-10 WAC.

(2) A person contesting a departmental decision regarding a registration, certificate, or approval may file a written request for an adjudicative proceeding consistent with chapter 246-10 WAC.

SEVERABILITY

NEW SECTION

WAC 246-272C-0650 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances shall not be affected.