



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: April 08, 2021

TIME: 12:31 PM

WSR 21-09-012

**Agency:** Southwest Clean Air Agency

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** \_\_\_\_\_ ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_ ; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW 70A.15.2040(1).**

**Title of rule and other identifying information:** (describe subject)

SWCAA 400-025 – Adoption of Federal Rules

Existing rule section establishing an adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 – Definitions

Existing rule section containing definitions for words and phrases used throughout SWCAA 400.

SWCAA 400-036 – Portable Sources from Other Washington Jurisdictions

Existing rule section allowing for operation of portable sources with valid approvals from other jurisdictions without obtaining an Agency approval.

SWCAA 400-040 – General Standards for Maximum Emissions

Existing rule section containing a minimum set of air emission standards applicable to all sources.

SWCAA 400-045 – Permit Application for Nonroad Engines

Existing rule section identifying requirements for nonroad engine permit applications.

SWCAA 400-046 – Application Review Process for Nonroad Engines

Existing rule section identifying requirements for the processing and approval of nonroad engine permit applications.

SWCAA 400-050 – Emission Standards for Combustion and Incineration Units

Existing rule section establishing minimum emission standards for all combustion and incineration units with additional requirements for specific categories of combustion and incineration units.

SWCAA 400-070 – General Requirements for Certain Source Categories

Existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 – Emission Standards for Selected Small Source Categories

Existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories.

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

Existing rule section that adopts by reference federal standards relating to hazardous air pollutant standards contained in 40 CFR Parts 61, 63, and 65.

SWCAA 400-081 – Startup and Shutdown

Existing rule section containing provisions addressing sources that cannot comply with technology based emission standards during startup and shutdown.

SWCAA 400-091 – Voluntary Limits on Emissions

Existing rule section containing provisions by which a source may voluntarily limit its potential to emit.

SWCAA 400-100 – Registration Requirements

Existing rule section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-103 – Operating Permit Fees

Existing rule section governing fee assessment and expenditure for the Operating Permit Program.

SWCAA 400-105 – Records, Monitoring and Reporting

Existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

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

Existing rule section that establishes minimum standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-107 – Excess Emissions

Existing rule section identifying requirements for the reporting of excess emissions and providing penalty relief for unavoidable excess emissions.

SWCAA 400-109 – Air Discharge Permit Applications

Existing rule section that identifies requirements for the submission and content of Air Discharge Permit applications.

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

Existing rule section identifying requirements for the processing and approval of Air Discharge Permit applications.

SWCAA 400-111 – Requirements for New Sources in a Maintenance Plan Area

Existing rule section identifying requirements specific to new sources located in a Maintenance Plan Area.

SWCAA 400-112 – Requirements for New Sources in Nonattainment Areas.

Existing rule section identifying requirements specific to new sources located in Nonattainment Areas.

SWCAA 400-113 – Requirements for New Sources in Attainment or Nonclassifiable Areas.

Existing rule section identifying requirements specific to new sources located in Attainment or Nonclassifiable Areas.

SWCAA 400-114 – Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source

Existing rule section identifying requirements specific to replacement or alteration of existing emission control technology.

SWCAA 400-115 – Standards of Performance for New Sources

Existing rule section that adopts by reference federal standards for new sources contained in 40 CFR Part 60.

SWCAA 400-136 – Maintenance of Emission Reduction Credits in Bank.

Existing rule section identifying requirements for maintenance of the emission credit bank, issuance of emission reduction credits, and management of expired credits.

SWCAA 400-151 – Retrofit Requirements for Visibility Protection

Existing rule section identifying requirements for existing stationary facilities.

SWCAA 400-171 – Public Involvement

Existing rule section identifying requirements for public notice of agency actions and the process by which public involvement is to be administered.

SWCAA 400-180 – Variance

Existing rule section identifying procedure for requesting a variance.

SWCAA 400-230 – Regulatory Actions and Civil Penalties.

Existing rule section identifying the Agency's authority to take regulatory action and issue civil penalties.

SWCAA 400-235 – Credible Evidence

New rule section addressing the use of credible evidence in determining compliance.

SWCAA 400-240 – Criminal Penalties

Existing rule section regarding applicability of criminal penalties.

**SWCAA 400-260 – Conflict of Interest**

Existing rule section regarding compliance with Federal Clean Air Act provisions for conflict of interest.

**SWCAA 400-265 – Duty to Provide Information**

New rule section addressing agency authority to request information relevant to air emissions.

**SWCAA 400-270 – Confidentiality of Records and Information**

Existing rule section regarding submission and use of confidential information.

**SWCAA 400-280 – Powers of Agency**

Existing rule section identifying various powers of the agency under the Washington Clean Air Act.

**SWCAA 400-810 – Major Stationary Source and Major Modification Definitions.**

Existing rule section containing definitions applicable to the permitting program for new major stationary sources located in a designated nonattainment area.

**SWCAA 400, Appendix C - Federal Standards Adopted by Reference.**

Existing rule section containing informational lists of all federal regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
June 23, 2021	6:00 PM	Virtual online hearing	

**Date of intended adoption:** August 5, 2021 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Wess Safford

Address: 11815 NE 99<sup>th</sup> Street, Suite 1294, Vancouver, WA 98682t

Email: wess@swcleanair.org

Fax: (360) 576-0925

Other:

By (date) June 23, 2021

**Assistance for persons with disabilities:**

Contact Tina Hallock

Phone: (360) 574-3058 x110

Fax: (360) 576-0925

TTY: (360) 574-3058

Email: tina@swcleanair.org

Other:

By (date) May 21, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

**SWCAA 400-025 – Adoption of Federal Rules**

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

**SWCAA 400-030 – Definitions**

The proposed rule changes revise references to RCW 70.94, add a definition for diesel and revise definitions for distillate oil, new source, and volatile organic compound.

**SWCAA 400-036 – Portable Sources From Other Washington Jurisdictions**

The proposed rule changes revise requirements for relocation noticing and emission unit registration.

**SWCAA 400-040 – General Standards for Maximum Emissions**

The proposed rule changes revise references to RCW 70.94 and revise opacity standards to incorporate alternative standards for boiler startup/shutdown and kiln/boiler refractory curing.

**SWCAA 400-045 – Permit Application for Nonroad Engines**

The proposed rule changes make administrative edits.

**SWCAA 400-046 – Application Review Process for Nonroad Engines**

The proposed rule changes add language for presumptive application withdrawal and revise registration fee citations.

**SWCAA 400-050 – Emission Standards for Combustion and Incineration Units**

The proposed rule change adopts the federal plan in 40 CFR 62 Subpart III.

**SWCAA 400-070 – General Requirements for Certain Source Categories**

The proposed rule changes remove opacity exception for boiler soot blowing and grate cleaning, adopt the federal plan in 40 CFR 62 Subpart LLL, prohibit cyclonic burn barrels and make administrative edits.

**SWCAA 400-072 – Emission Standards for Selected Small Source Categories.**

The proposed rule changes remove EPA test method citation for small boilers/heaters, clarify exemption under SWCAA 400-109 and make administrative edits.

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

The proposed rule changes add exceptions to federal NESHAP adoption, update exceptions to federal MACT adoptions and make administrative edits.

**SWCAA 400-081 – Startup and Shutdown**

The proposed rule changes remove citation for technology-based emission standards.

**SWCAA 400-091 – Voluntary Limits on Emissions**

The proposed rule changes revise references to RCW 70.94.

**SWCAA 400-100 – Registration Requirements**

The proposed rule changes revise references to RCW 70.94 and make administrative edits.

**SWCAA 400-103 – Operating Permit Fees**

The proposed rule changes revise references to RCW 70.94 and add a procedure for review of program fee determinations.

**SWCAA 400-105 – Records, Monitoring and Reporting**

The proposed rule changes revise references to RCW 70.94, add a separate emission inventory submittal deadline for gasoline stations and make administrative edits.

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

The proposed rule changes revise requirement to test to include periodic and ongoing testing and revise required items for monitoring reports.

**SWCAA 400-107 – Excess Emissions**

The proposed rule changes revise unavoidable excess emission criteria to be consistent with federal court rulings and EPA guidance.

**SWCAA 400-109 – Air Discharge Permit Applications**

The proposed rule changes add an application procedure for permit extensions and make administrative edits.

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

The proposed rule changes revise references to RCW 70.94, add language for presumptive application withdrawal, clarify supersession of previous permits in new permitting actions, add reference to SWCAA 400-036, add notification and public involvement requirements for reopening for cause actions and make administrative edits.

**SWCAA 400-111 – Requirements for New Sources in a Maintenance Plan Area**

The proposed rule changes revise reference to RCW 70.94.

**SWCAA 400-112 – Requirements for New Sources in Nonattainment Areas**

The proposed rule changes revise reference to RCW 70.94.

**SWCAA 400-113 – Requirements for New Sources in Attainment or Nonclassifiable Areas**

The proposed rule changes revise reference to RCW 70.94.

**SWCAA 400-114 – Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source**

The proposed rule changes add a reference to T-RACT and an anti-backsliding requirement.

**SWCAA 400-115 – Standards of Performance for New Sources**

The proposed rule changes update exceptions to NSPS adoption and make administrative edits.

SWCAA 400-136 – Maintenance of Emission Reduction Credits in Bank  
The proposed rule changes revise reference to RCW 70.94.

SWCAA 400-151 – Retrofit Requirements for Visibility Protection  
The proposed rule change makes an administrative edit.

SWCAA 400-171 – Public Involvement  
The proposed rule changes revise references to RCW 70.94 and make administrative edits.

SWCAA 400-180 – Variance  
The proposed rule changes revise reference to RCW 70.94.

SWCAA 400-230 – Regulatory Actions and Civil Penalties  
The proposed rule changes revise references to RCW 70.94.

SWCAA 400-235 – Credible Evidence  
The proposed rule changes add a new rule section addressing the use of credible evidence in determining compliance.

SWCAA 400-240 – Criminal Penalties  
The proposed rule changes revise reference to RCW 70.94.

SWCAA 400-260 – Conflict of Interest  
The proposed rule changes revise federal regulation citations.

SWCAA 400-265 – Duty to Provide Information  
The proposed rule changes add a new rule section regarding SWCAA's authority to request information relevant to air emissions.

SWCAA 400-270 – Confidentiality of Records and Information  
The proposed rule changes revise references to RCW 70.94.

SWCAA 400-280 – Powers of Agency  
The proposed rule changes revise references to RCW 70.94 and make administrative edits.

SWCAA 400-810 – Major Stationary Source and Major Modification Definitions  
The proposed rule changes make administrative edits.

SWCAA 400 Appendix C - FEDERAL STANDARDS ADOPTED BY REFERENCE  
The proposed rule changes update lists of adopted federal regulations and make administrative edits.

**Reasons supporting proposal:**

The proposed changes are necessary to support the Agency's implementation of the Washington state Clean Air Act and associated federal standards.

**Statutory authority for adoption:** RCW 70A.15.2040(1)

**Statute being implemented:** RCW 70A.15.2040(1)

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Southwest Clean Air Agency  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Wess Safford	11815 NE 99 <sup>th</sup> Street, Suite 1294, Vancouver, WA 98682	(360) 574-3058 x126
Implementation:	Paul Mairose	11815 NE 99 <sup>th</sup> Street, Suite 1294, Vancouver, WA 98682	(360) 574-3058 x130
Enforcement:	Jerry Ebersole	11815 NE 99 <sup>th</sup> Street, Suite 1294, Vancouver, WA 98682	(360) 574-3058 x122

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

No: Please explain: Pursuant to RCW 70A.15.2040(1), Section 201, Chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking Section 201, Chapter 403, Laws of 1995 for this action.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 70A.15.2040(1).

Explanation of exemptions, if necessary: Pursuant to RCW 70A.15.2040(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with Chapter 42.30 RCW and selected portions of Chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of Chapter 19.85 RCW.

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**


If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

<b>Date:</b> April 8, 2021	<b>Signature:</b> 
<b>Name:</b> Uri Papish	
<b>Title:</b> Executive Director	