



Concise Explanatory Statement

for Amendments to SRCAA Regulation I, Articles IV, V and X

Summary of rulemaking and response to comments

Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Spokane Regional Clean Air Agency's (SRCAA) response to written and oral comments.

Reason for Adopting the Regulation

SRCAA removed marijuana producers and processors from the agency's annual registration program. Amendments included removing marijuana producers and processors from the source category list in Article IV, Section 4.04(A); removing marijuana producers and processors from the NOC exemption in Article V, Section 5.02(I); and amending citing in Article X, Section 10.15(A) & (B).

The amendments will not affect SRCAA's ability to address future odor concerns from marijuana producers and marijuana processors. Marijuana producers and processors will not be part of the annual registration program, but they still must comply with SRCAA Regulation I, including but not limited to Article VI, Section 6.04 Emissions of an air contaminant detrimental to person, property, and Section 6.18 Standards for marijuana producers and processors. If a producer or processor has compliance issues with SRCAA Regulation I, the agency can pursue enforcement action and/or SRCAA's control officer can require registration under Article IV, Section 4.04(A)(2)(c) or under other applicable categories in Section 4.04(A).

The amendments allow the agency to reallocate staff to other programs. The amendments will decrease the total local assessment cost that supplemented the registration costs for marijuana producers and processors. The amendments do not add new requirements for businesses or residents to meet.

The table below summarize the adopted changes.

Section	Section Title	Action
4.04(A)	Stationary Sources and Source Categories Subject to Registration	Remove marijuana producers and processors from 4.04(A)(3)(u) & (v); remove marijuana processors from 4.04(A)(5)(e)9.; and renumber lists
5.02(l)	New Source Review Applicability and When Required	Remove marijuana producers and processors from an NOC exemption in 5.02(l)(1)(b); renumber list
10.15(A) & (B)	Marijuana Production and Marijuana Processing Registration and Application Fees	Update citing in 10.15(A) & (B) from Exhibit R to Section 4.01.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires SRCAA to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, and stating the reasons for the differences.

No changes were made.

Response to Comments

SRCAA accepted comments between January 1 and February 2, 2023. A public hearing was held during the February 2, 2023 SRCAA Board of Directors meeting.

Outreach for the notice of comment period and public hearing included:

- January 1, 2023:
 - Legal notice in Spokesman Review (95,939 Sunday circulation)
 - Website notice posted through February 2, 2023
- January 3, 2023:
 - SEPA DNS in Spokesman Review (76,291 Tuesday circulation)
 - Emails sent to Board of Directors and Advisory Council; community partners received email about rulemaking or SEPA DNS; regulatory update list serv; registered sources
 - Postcard mailing to registered sources and complainants
- January 4, 2023: Publication in Washington State Register, publication #22-01-031
- January 29, 2023: Legal notice in Spokesman Review about public hearing (95,939 Sunday circulation)
- February 2, 2023: Public hearing

Two written comments and two oral comments were received for this rulemaking.

Commenter Index (in order comments received)

Name	Date Received, Affiliation	Comment Theme
Anthony & Janette Birch	1/17/23	Do not support changes
Connie Sullivan	2/1/23	Do not support changes
Mark Collins	2/2/23	Support changes
Brett Emmet	2/2/23	Support changes

Comment Themes and Agency Response

Do not support changes:

1. Summary of comment from Anthony & Janette Birch: We were affected by odor produced by Bangs Cannabis and provided testimony for new rules considered; Rules subsequently adopted by SRCAA including annual registration were a factor in abating nuisance; Registration brings grower's attention to rules regarding odors/emissions and address issues on front end; Registration program effective if grower/processor cannot meet the requirements they should consider not to pursue activity; Requirements working; Do not make changes.

Spokane Regional Clean Air Agency (SRCAA) Response:

SRCAA received your comments during the rulemaking process to develop the new, sector specific regulation for marijuana producers and processors (Article VI, Section 6.18) and to add marijuana producers and processors to the agencies existing annual registration program (Article IV, Section 4.04), which includes annual fee, annual report and periodic inspections.

SRCAA agrees that the air quality regulations that were adopted in 2018 by SRCAA (Article VI, Section 6.18 Standards for marijuana producers and processors) were a factor in reducing nuisance odors. Changes in the industry were also a factor.

SRCAA agrees the annual registration program is a tool which helps promote compliance of air pollution regulations and reduce air contaminant emissions. And registration is a proactive approach for addressing air quality concerns.

When contemplating proposed amendments to the annual registration program, the agency staff considered the history of the program, the trends as the marijuana industry matures, including the number of odor complaints, number of registered sources and the cost to the agency to run the marijuana annual registration program. Odor complaints have dropped from a peak of 497 in 2017 to 12 in 2022. The number of producers/processors in our jurisdiction has decreased from 135 to 109. Most of the registration program's resources are spent collecting fees and not on activities with air quality benefits. The cost of registration now outweighs the benefits. The operating standards, Article VI, Section 6.18, do impact air quality and will not be changed.

SRCAAs will still have the capacity to address future odor concerns from marijuana producers and processors and conduct industry outreach if necessary. Marijuana producers and processors must still comply with SRCAA Regulation I, including but not limited to:

- Article VI, Section 6.18 Standards for marijuana producers and processors
- Article VI, Section 6.04 Emissions of an air contaminant detrimental to person, property
- Article IV, Section 6.01 Outdoor burning
- Article IV Registration, for other applicable categories (i.e., install a large boiler)
- Article V New source review, for other applicable categories (i.e. install a large boiler)

Although beneficial, changes since the rules were adopted made the current annual registration regulatory approach no longer necessary or cost effective.

Marijuana program parts and what is retained and what is removed:

RETAIN Compliance	REMOVE Registration
Compliant response	Gather current information on sources
Enforcement of Odor Reg (6.04)	Gather annual registration fees:
Enforcement of MJ Reg. 6.18	-Fund for complaint response
Corrective action orders and NOV's for non-compliance	-Fund for routine inspections
Penalties issued through existing process	-Fund for administrative support
Registration & permitting for other source categories, i.e., large boiler	Routine inspections

2. Summary of comment from Connie Sullivan: Live nearby producer, manufacturers, dealers, retailers, and clients all foul the air; Greenhand producer/retailer clients smoke marijuana at site and in their cars, also neighbor smokes and odors from producing and smoking enter her home; driveway blocked by retailer clients; do not need more contaminants or lack of regulations.

Spokane Regional Clean Air Agency (SRCAA) Response:

Thank you for your comment.

SRCAA proposed to remove marijuana producers and marijuana processors from the agency annual registration program; eliminating annual reporting and fees and periodic inspections. Marijuana producers and processors still must comply with the SRCAAs Article VI, Section 6.18 Standards for marijuana producers and processors as well as other regulations in SRCAA Regulation I. SRCAA will still have the capacity to address future odor concerns from marijuana producers and processors.

Although it does impact air quality, the local health department, not SRCAA, has jurisdiction over smoking in public spaces. The proposed changes will therefore not impact this activity. The Spokane Regional Health District smoking complaint line is 509-232-1707.

It is a common perception that producers intentionally schedule odor producing activities at night to avoid SRCAA inspectors. While this is possible, daily cycles in weather conditions are often the reason for increase odors at night and during cold weather. Please call SRCAA to file an odor complaint, 509-477-4727, the next time the odors from the marijuana producer in your neighborhood impact the use and enjoyment of your property.

For the on-street parking and the operating vehicles under the influence concerns, please contact your neighborhood COPS office, North Central COPS Shop, 806 W Knox Ave, 509-625-3348.

Support Changes:

3. Summary of comment from Mark Collins: Complaints decreasing because industry more established; treat industry like ag; odors and Christmas tree farms; excessive fees and businesses not paying fees.

Spokane Regional Clean Air Agency (SRCAA) Response:

Thank you for your comment.

SRCAA agrees that one factor leading to the decreased number of odor complaints is that the industry is becoming more established and has an increased knowledge of the regulations they must meet, including SRCAA regulations such as Article VI, Section 6.18 Standards for marijuana producers and processors. All marijuana producers and processors in Spokane County must still comply with local air quality regulations.

Agricultural operations are regulated by many different agencies and have environmental regulations to comply with, depending on industry type, pollutants, and odors. For example, poultry and livestock operations are required to develop best practices to minimize odors from their operations.

Odors are considered an air contaminant in Washington state regulations and SRCAA regulations.

The commenter mentioned that Christmas tree farms emit odorous compounds like marijuana producers and processors. SRCAA agrees that plants emit volatile organic compounds. Some plants emit more VOCs than others. Some of the compounds released by plants are more readily detected by humans than other VOCs.

Thank you for paying your annual registration fees in a timely manner. Registration fees are intended to be full cost recovery to offset the cost of providing the services. When not at full cost recovery, the local assessment funds the gap.

4. Summary of comment from Brett Emmert: Have not seen a public benefit of registration program; not inspected for some time but paying annual fees; in an industrial area no complaints; address individuals as needed for complaints.

Spokane Regional Clean Air Agency (SRCAA) Response:

Most of the agency's marijuana annual registration program resources are spent collecting fees and not on activities with air quality benefits, such as inspections. The cost of registration now outweighs the air quality benefits. The operating standards that producers and processors must comply with (Article VI, Section 6.18) do impact air quality and will not be changed.

Inspection staff was available for compliance assistance visits in 2018 and began regular inspections in 2019. In 2020, in-person inspections were curtailed due to Covid-19. With the annual registration program, not every registered source is inspected every year.

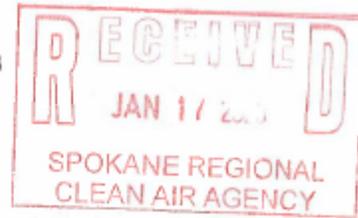
Appropriate zoning and siting of producers and processors is important and can reduce nuisance complaints.

The amendments to the registration program will not affect SRCAA's ability to address future odor concerns from marijuana producers and marijuana processors and SRCAA can address individual businesses as needed. If a producer or processor has compliance issues with SRCAA Regulation I, the agency can pursue enforcement action and/or SRCAA's control officer can require registration under Article IV, Section 4.04(A)(2)(c).

Thank you for your comment.

Written & Oral Comments (in order comments received)

January 12, 2023



To: Spokane Regional Clean Air Agency
1610 S. Technology Blvd., Suite 10
Spokane, WA 99224

Subject: Response to proposed amendment to remove marijuana producers and processors as a source category in Article IV, Section 4.04 (A) and from the NOC exemption in Article V Section 5.02 (1) and updating citing in Article X. Section 10.15 (A) and (B)

Our position follows in response to the invitation for public comment prior to the February 2, 2023, public hearing:

We were greatly affected by the odor produced by the marijuana grow known as Bangs Cannibis. As a result, we provided previous testimony during the period they were producing and new rules were being considered.

The rules subsequently adopted by the SRCAA including annual registration were a factor in effectively abating the significant nuisance.

Registration brings to the potential grower's attention the rules regarding odors/emissions. This causes the issues to be addressed at the front end rather than having to deal with the odor/emissions in a reactive mode after problems occur.

The present rules of the registration program have been effective. If the potential or continuing grower/processor cannot meet the requirements they should consider not to persue/continue the activity.

Thank you for this opportunity to comment. The present requirements are working. Please do not make any changes.

Sincerely,

A handwritten signature in black ink that reads "Anthony and Janette Birch". The signature is written in a cursive, flowing style.

Anthony and Janette Birch
12230 S. Gwendolyn Lane
Cheney, WA 99004
509-448-4847
da3mj4@gmail.com

2/1/23, 9:33a Email with attachment

Email

Subject: Remove all of producers/processors

Hi Marty here is my comment. Producers, manufacturers and the public users of marijuana will NEVER regulate themselves. It's the reason there is regulation and the need to regulate. See attachment.

Connie Sullivan

Attachment

February 1, 2023

Spokane Regional Clean Air Agency
1610 S. Technology Blvd.
Suite 101
Spokane WA 99224

RE: Proposed Amendments to SRCAA's Annual Registration Program.

I live within the vicinity of producers, manufacturers, dealers, retailers, clients and a neighborhood where the all of the mentioned not only foul the air but seem to be deliberate and abusive in not only their production but also their use of marijuana including the interference with day to day existence.

The 900 block of W. Jackson is a product of the abuses that the Greenhand producer/retailer's clients and manufacturer. Their lack of respect and their behavior is represented by the 900 block being used as a "sit in your vehicle and smoke marijuana lobby" and then drive under those conditions. In addition, it is not unusual to smell (in the summer have the inside of my home contaminated) the marijuana contamination in the middle of the night coming from the homes next door and the producers located in the neighborhood. It is also not unusual to smell and watch as the clients walk along the side walk and light up, smoke and contaminate the air we breathe.

It is not unusual to have my driveway blocked or to be threatened when these clients are asked to move their vehicles. There has been semi with tractor trailers left running while the occupant walks to Greenhand to purchase their supply and then make abusive comments accompanied by the usual obscene gesture that all of the clients/users seem to have in common.

We don't need more contaminates or lack of regulations regarding the marijuana issues, producers, dealers, and manufacturers. We need some structure because in living in this environment it has become CLEAR that the clients, users, industry has no regard for anyone's experience except their own.

In speaking to law enforcement, it has been explained to me that "the voters blind fully voted to approve marijuana and its use without knowledge of the lack of regulation to both the industry and its clients". The attribute and need to share their habit, behavior and abuse seem to go with the marijuana industry.

Sincerely,

Connie Sullivan
907 W Jackson
Spokane WA 99205

2/2/23 testimony during public hearing

Mark Collins

13026 W McFarlane Rd, Bldg C1 Unit 3

Airway Heights, WA 99001

Thank you. Good morning, everybody. I appreciate the time in front of this board. I am glad to see this issue isn't as contentious as it was back in 2016. That was an interesting time period. Mr. French, I got to sit down with you in your office, back in that time period and have a discussion with you. I don't know if you remember that or not. But, as we've gone through these years the complaints are going down, I think just because the industry is becoming more established. Right? It's just continuing on making revenue, creating jobs; all these different things for our communities. Over constantly under these burdens that are imposed on us financially, whether its fees from the state, local, county and city. The way we have to pay our taxes, all these different things. Now each time we get another one of these fees though, that takes away from employment opportunities and building in our communities. We want to see our communities grow just like everybody else in this room. And we appreciate what we do for our community. Now, we don't want to rub people the wrong way either or create problems, have unnecessary things with your neighbors, all these things that other people have to go through as well. But we would like to be treated like any other agricultural industry in this state. You know, I think to myself the Christmas tree farms we have out here in Spokane, how would we treat those companies or how would those companies feel if we told them they had to pay a fee each year just cause of the smell of those Christmas trees. Plus essentially how we feel about this situation because we're not creating any type of pollutant or putting anything negative back into our air, it's the same exact smells as those Christmas trees made by the same exact chemicals. We just want to continue doing business and do good by our communities. All these fees are excessive at times and feel like a burden. And I'll tell you anecdotally, we bought a business in 2019 that was well behind on this fee from the Spokane Clean Air Agency. I had to come deal with you all and you're a wonderful staff, by the way. I appreciate everything you did to help at the time. But they were well behind. They hadn't paid anything because they couldn't afford it, and then that was just part of the reason they went out of business. We took that company over bought all these fees, right, and made it good and have kept paying each year. But I know there's plenty of cannabis companies out there that are not. They're constantly late on their fees, they're not paying their fees, not because they don't want to, but more than likely cause they can't afford to. Now, seeing the cities rev or the agencies revenue is also lacking, it seems like we're having two separate sides losing money in this situation. So why does it help to keep doing it if the Agency already has ways to sit there enforce codes on us and make sure that we're not...(Scott Windsor stopped him at his three minute mark) Thank you for your time. I appreciate it.

2/2/23 testimony during public hearing

Brett Emmet

No contact information provided

Hi everybody, thanks for having us today. I just kinda wanted to think back on what Mark stated there, I feel very much the same. I haven't really seen any benefit to the public through enforcement or a reduction in odors. We know that my farm personally outside of the agency showing up early on just to collect fees, no one has ever come to actually tour the farm, see where we can make improvements, or have a reduction. So we've been paying the fees but have not seen anything back and in our particular area, we're an industrial complex, nobody has ever really made any complaints that I'm aware of anyway. But I just don't see the benefit, it's just one more burden for companies to handle as far as the fees go, the added expenses. Not sure if all of you know or not, but since it is an agricultural crop, it's treated a lot like a commodity. There's not a whole lot of revenue made on, on cannabis, on paper it looks great, in reality with overhead it's not great. You can ask anybody that's in the industry and they'll tell you the same thing. So anyway, a long story short, I just don't see the benefit to it. I think it would be good for that to pause and then address the individuals as needed when complaints do come up on individual situations, I'm not opposed to that. Thank you for your time.