

DRAFT Rulemaking Changes to Chapters 173-400 and 173-401 WAC

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WAC 173-400-025 Adoption of federal rules.

- (1) Federal rules mentioned in this rule are adopted as they exist on ~~January 1, 2016~~DATE, 2017. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

WAC 173-400-030 Definitions. [The section defines 95 defined terms.]

“Alternate emission limitation” means an emissions limitation ~~in a SIP~~ that applies during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limitation is a component of a continuously applicable emission limitation. An alternative emission limitation may be a numerical limitation or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

Commented [GE(1): Source 80 FR 3396.

Commented [GE(2): Deleted SIP because the emission limitation under state rules applies regardless of whether that limit is in a SIP. Including SIP here pulls in the process to the limitation. Those components are linked but separate.

Commented [ARN3]: Meant to cover things like head loss across a baghouse or wet scrubber, scrubber liquor flow rates, spark rate for an ESP, etc

“Electronic means” means email, fax or other electronic method.

(27) **“Emission standard”** and **“emission limitation”** means a requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a 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.

(30) **“Excess emissions”** means emissions of an air pollutant in excess of any applicable emission standard.

“Hog fuel boiler” means device, furnace, or boiler using wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

“Industrial furnace” means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 CFR 260.10.

“Shutdown” means, generally, the cessation of operation of a source for any reason.

Commented [GE(4): Source 80 FR 33977.

“Startup” means, generally, the setting in operation of a stationary source or emissions unit for any reason.

Commented [GE(5): Source 80 FR 33977.

“Useful thermal energy” means energy (steam or hot water) that meets the minimum operating temperature, flow, and/or pressure required by any ~~energy use~~ system that uses energy provided by the affected boiler.

Commented [GE(6): Source: 40 CFR 63.11237

Commented [GE(7): Lyn Tober suggested edit.

“Wigwam and silo burners” means ...

“Wood-fired boiler” means device, furnace, or boiler used in the process of burning wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer.

“Wood waste burner” means ...

- (95) **"Volatile organic compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.
- (a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃ or 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); methyl formate (HCOOCH₃); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF₂OCF₂H (HFE-134); HCF₂OCF₂OCF₂H (HFE-236cal2); HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13); HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; 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, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60 Appendix A [\(in effect on the date in WAC 173-400-025\)](#). Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.
- (c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.
- (d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.

WAC 173-400-035 Nonroad engines.

(1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

- (a) Any nonroad engine that is:
 - (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; or
 - (ii) In or on a piece of equipment that is intended to be propelled while performing its function.
- (b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.
- (c) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.

(d) A back-up nonroad engine demonstrated to have the same or lower emissions than the primary power nonroad engine.

Commented [GE(8): EPA suggested clarification.

(2) **Nonroad engines are not subject to:**

- (a) New source review.
- (b) Control technology determinations.
- (c) Emission limits set by the state implementation plan, SIP.
- (d) Chapter 173-460 WAC.

All days that a nonroad engine provides the same function for the source, regardless of where within the boundaries of the source the function is performed, shall be included in determining whether the engine has become a stationary engine.

Commented [GE(9): EPA commented that this change is contrary to the CAA, EPA's definition of nonroad engine, and would jeopardize approval of the stationary source permitting programs.

WSPA commented that provision conflicts with EPA's definition of nonroad engine and implementing guidance.

(3) **Fuel standards.** All nonroad engines must use ultra low sulfur diesel or ultra low sulfur bio-diesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG). A facility that receives deliveries of only ultra low sulfur diesel or ultra low sulfur bio-diesel is deemed to be compliant with this fuel standard.

(4) **> 500 and ≤ 2000 BHP.** This section applies to a project that requires the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

Commented [GE(10): Clarifies that requirement applies to new project not existing fleet of nonroad engines.

- (a) Notification of intent to operate is required before operations begin. The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:
 - (i) Name and address of owner or operator;
 - (ii) Site address or location;
 - (iii) Date of equipment arrival at the site;
 - (iv) Cumulative engine maximum rated BHP.
 - (b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:
 - (i) Site address or location;
 - (ii) Date of equipment arrival at the site;
 - (iii) Date of equipment departure from the site;
 - (iv) Engine function or purpose;
 - (v) Identification of each component as follows:
 - (A) Equipment manufacturer, model number and its unique serial number;
 - (B) Engine model year;
 - (vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).
 - (c) Record retention requirements. The owner or operator must keep the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.
- (5) **> 2000 BHP.** This section applies to a project that requires the installation and operation of any nonroad engine with a cumulative maximum rated brake horsepower greater than 2000 BHP.
- (a) Notification of intent to operate.
 - (i) Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).
 - (ii) The notification must contain, at a minimum, the information in (4)(a) of this section.
 - (b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

- (c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.
- (d) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.

(6) Requirements specific to projects on Department of Defense and Department of Energy facilities.

- (a) Department of Defense and Department of Energy facilities over 50 acres in size may exclude engines below 50 brake horsepower to determine cumulative maximum engine horsepower.

Ecology may designate the size of the location at the Department of Energy Hanford facility.

- (b) Ecology may establish specific criteria to assist it and the Departments of Defense and Energy to determine when a particular nonroad engine becomes a stationary engine. This criteria shall not conflict with the definition of “nonroad” engine in 40 CFR 89.2 or with EPA guidance construing that term.

(e7) Integrated review. Applicants seeking approval to construct or modify a stationary source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source may elect to integrate the reviews. The notification process for integrated review must comply with the new source review public involvement procedures for the stationary source as applicable (i.e., WAC 173-400-171 or 173-400-740).

(e8) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

(e9) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

(e10) Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2) of this section, the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engines do not cause or contribute to a violation of National Ambient Air Quality Standards.

(e11) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

Commented [GE(11): EPA comment: As discussed in the email, this provision is contrary to the CAA and EPA’s definition of nonroad engine. A location is a specific point in space and not a geographic area. This provision could result in a nonroad engine (one that needs to move to perform its function) being impermissibly regulated by Ecology as a stationary engine.
WSPA agrees with EPA comment.

Commented [GE(12): Ecology is pondering whether to include “with EPA guidance construing this term” because use of “shall” mandates compliance with guidance. The guidance citation must specify a specific version that exists on a specific date. This reference must be updated when EPA revises that guidance before the new guidance would apply.

Commented [GE(13): WSPA commented that the specific criteria may not narrow or enlarge the scope of the what qualifies under EPA’s rules as a nonroad engine and suggested new sentence if Ecology keeps this provision.

(12) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

WAC 173-400-040 General standards for maximum emissions.**(1) General requirements.**

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions 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 emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity. ~~except. Exceptions: The following are exceptions from this standard:~~

~~(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 allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.~~

~~(b)(a)~~ When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

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

~~(d)(c)~~ When an alternate opacity limit has been established per:

Commented [GE(14)]: Relocated and expanded in (e) below.

- (i) RCW 70.94.331(2)(c); or
- (ii) WAC 173-400-082(3).
- (d) When emissions occur due to start up of a hog fuel or wood fired boiler, visible emissions may exceed not exceed 40 percent opacity when the following conditions are met:
 - (i) For purposes of this subsection:
 - (A) Start up begins when fuel is ignited in the boiler fire box.
 - (B) Start up ends at the earlier of the following:
 - (I) If applicable, the dry electrostatic precipitator or baghouse controlling emissions from the boiler has met its minimum operating temperature. The control must be operated at this time; or
 - (II) Four hours after the boiler is capable of supplying useful thermal energy.
 - (ii) Maintain records documenting that the boiler complied with the requirements in this subsection. Records mean properly signed contemporaneous operating logs or other relevant evidence.
- (e) When the emissions occur due to soot blowing or grate cleaning of a hog fuel or wood fired boiler, visible emissions may not exceed 40 percent opacity for not more than 15 consecutive minutes in any 8 hours period. For this exemption to apply, the owner or operator must meet the following conditions:
 - (i) Schedule the soot blowing and/or grate cleaning for the same approximate time(s) each day; and
 - (ii) Notify the permitting authority in writing of the schedule in (i) of this subsection in advance of the occurrence of visible emission exceeding 20 percent opacity due to soot blowing and/or grate cleaning.
 - (iii) Maintains records documenting that the boiler complied with the requirements in this subsection. Records mean properly signed contemporaneous operating logs or other relevant evidence.
- (f) When visible emissions that occur during curing of furnace refractory after maintenance, repair, or replacement in an existing lime kiln, industrial furnace or boiler may not exceed 40 percent opacity when the following requirements are met:

Commented [GE(15)]: The provision is not in the SIP.

Commented [ARN16R15]: And EPA has historically said it won't be accepted since the alternative opacity limit concept included in (2)(c) is tied to the PM limit.

Commented [GE(17)]: Requirement in (2) specifies the method (3 minutes in any one hour) .

Commented [GE(18)]: EPA commented that the 4 hour period ends after the boiler is capable of supplying useful thermal energy.

Commented [ARN19R18]: We copied the boiler MACT criteria before. This is a deviation from that criteria.

Commented [DD(20)]: EPA commented that recordkeeping is required to ensure the requirement is enforceable. See criteria 7 in FR 80 FR 33980.

Commented [GE(21)]: Existing language in deleted (2)(a) above.

Commented [GE(22)]: Changed from "advised of the schedule" based on EPA comment that the action must be enforceable. 80 FR 33980.

Commented [DD(23)]: To claim exemption under 109, notification must occur in advance of the excess emission event.

Commented [DD(24)]: EPA commented that recordkeeping is required to ensure the requirement is enforceable. See criteria 7 in FR 80 FR 33980.

Commented [DD(25)]: EPA wondered whether we need an opacity standard during curing (to remove moisture). Chemically unmixed, but physically mixed is this not exempted in 040(2)(b).

~~(i) The total duration of refractory curing does not exceed 36 hours, unless provided for in an NOC approval order issued in compliance with WAC 173-400-081(4) or WAC 173-400-082(4); and~~

~~(ii) The owner or operator provided a copy of the manufacturer's instructions on curing refractory to the permitting authority; and~~

~~(iii) The manufacturer's instructions on curing refractory are followed, including all instructions on temperature increase rates and holding temperatures and time; and~~

~~(iv) The emission controls are engaged as soon as possible during the curing process; and~~

~~(v) The owner or operator notifies the permitting authority at least one working day prior to the start of the refractory curing process.~~

~~(e) Exemptions from twenty percent opacity standard.~~

~~(f)(g) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 C.F.R. Part 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. When testing and certifying visible emission readers, visible emissions from the "smoke generator" are exempt from the 20 percent opacity limit. Testing must follow testing and certification requirements in 40 C.F.R. Part 60, Appendix A, Reference Method 9 (in effect on the date in WAC 173-400-025) and ecology methods 9A and 9B (Ecology Source Test Manual).~~

~~(g)(h) Military training exercises. Visible emissions resulting from military obscurant training exercises are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met: When holding military obscurant training exercises, visible emissions are exempt from the twenty percent opacity limit when the following requirements are met:~~

- ~~(i) No visible emissions shall cross the boundary of the military training site/reservation.~~
- ~~(ii) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, 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 result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather~~

Commented [GE(26)]: NOC deleted because orders issued under 081 and 082 are different types of orders, but still an order.

Commented [GE(27)]: Lyn Tober wondered if RCW 70.94.141(11) limits our ability to use NOC to issue a less restrictive requirement.

Response: There is nothing in this provision that impacts an NOC approval order. The provision:

- gives an agency the power to *consult* with a source about devices and air pollution problems.
- does not relieve any person from compliance with laws and rules based on that conversation.

Lyn Tober wondered how we can give relief from an emission limit in an NSR permit given WAC 173-400-113(1) requires compliance with emission standards adopted under Chapter 70.94 RCW.

Response: RCW 70.94.380 provides a mechanism for an agency to have requirements for the control of emissions that are less stringent than those adopted by Ecology. We've added this connection to section 082.

Commented [GE(28)]: EPA commented that this provision must include a phrase that the 082 order is approved by EPA as a SIP revision. 082 includes this requirement so we don't think it is needed here.

conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(i) Firefighter training. ~~Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.~~ When training firefighters, visible emissions from fixed and mobile firefighting training facilities are exempt from the 20 percent opacity limit. Compliance with chapter 173-425 WAC is required.

- (3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.
- (4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:
- (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 emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator 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.
- (5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of ~~his~~their property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.
- (6) **Emissions detrimental to persons or property.** No person shall cause or allow 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.
- (7) **Sulfur dioxide.**
- (a) No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes. ~~Exceptions are listed in (b) and (c) of this subsection.~~

(b) Sulfur recovery unit alternate emission standard.

(i) During startup or shutdown of a sulfur recovery unit described in regulated by 40 C.F.R. 63.1579 (in effect on the date in WAC 173-400-025), the owner or operator shall:

(A) Follow the facility's written startup or shutdown procedures;

(B) Limit emissions to less than 100 pounds per event hour from the event; and

(C) Maintain records documenting that the sulfur recovery unit complied with the requirements in this subsection. Records mean properly signed contemporaneous operating logs or other relevant evidence.

(c) Permit specific alternate emission standard. A permitting authority may approve an alternate emission standard to the limits in (a) and (b) of this subsection for a specific emission unit(s) under WAC 173-400-082.

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

(9) **Fugitive dust.**

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

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

(10) Requirement to minimize emissions.

(11) Operation of installed air pollution control equipment.

WAC 173-400-050 Emission standards for combustion and incineration units.

(a) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of

Commented [GE(29)]: Based on air agency recommendation, startup removed because excess emissions have been identified as an issue *only* during shutdown.

Commented [GE(30)]: Reflects the original recommendation from NWCAA based on their refinery data.

Commented [GE(31)]: Relationship to the 1000 ppb standard in (7) is unclear. We need to clarify that this is additive. ???

Commented [GE(32)]: WSPA questioned whether 100 lbs/hour per event is achievable at some refineries during a normal SRU shutdown event. WSPAA is discussing with NWCAA.

Commented [DD(33)]: EPA commented that contemporaneous recordkeeping is required to demonstrate the work practice standards are enforceable per 80 FR 33980.

Commented [GE(34)]: WSPA suggested clarification.

Commented [DD(35)]: We deleted the process to establish an alternate emission standard for SO2 because it was a confusing duplication of the process in section 082.

Commented [GE(36)]: WSPA, data centers in Quincy (Yahoo!, Microsoft, NTT Data Services, Sabey, and Vangtage), Simplot, and NWPPA commented that this provision is vague and problematic. They are uncertain what problem this section addresses.

Ecology included this provision as a work practice condition because our rules do not identify all specific operating conditions. Other states include this condition in the SIP rules. We are removing the provision at this time.

Commented [GE(37)]: WSPA, Simplot and NWPPA commented that it is unreasonable to require operation of control equipment at all times. This provision defeats the purpose of 081 and 082 which allow higher emission limits for scenarios when equipment can't be operated for safety or other good reasons.

See previous Ecology response.

particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by test method 5 in Appendix A to 40 C.F.R. Part 60, (in effect on the date in WAC 173-400-025) or approved procedures contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

Commented [GE(38)]: Lyn Tober commented about the challenges with comparing continuous monitoring to steady state. I'm including her comment so we can talk about this. I suspect others may also be confused.

Comment: If they don't have a continuous monitoring device, do they need a startup/shutdown exemption? If they do need an exemption but only do stack testing at steady state, for instance, how do we know that they are either in or out of compliance with the regular standard without some sort of compliance demonstration?

~~(6)~~(7) **Sewage sludge incineration units** constructed on or before October 14, 2010. Sewage sludge incineration units constructed on or before October 14, 2010, must comply with 40 C.F.R. Part 62, Subpart LLL (in effect on the date in WAC 173-400-025).

WAC 173-400-070 Emission standards for certain source categories.

Ecology finds that the reasonable regulation of 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 emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

- (1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019 provided it complies with the following:
- (a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or ~~173-400-115 (40 C.F.R. Part 60, subpart DDDD)~~ 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025), as applicable.
 - (b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.
 - (c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.
 - (d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include but shall not be limited to:

Commented [GE(39)]: EPA turned the subpart DDDD emission guideline into the federal rule that applies in Washington (part 62 rule).

- (i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. ~~An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.~~
- (ii) A requirement to apply BACT.
- (iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuelboilers.**

- (a) ~~Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1). except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.~~
- (b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

Commented [DD(40)]: We maintained this provision to keep the reference to the PM requirement in 050(1).

Commented [DD(41)]: We retained this provision because it is not duplicated in 040(2).

(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 as specified in WAC 173-400-040(2). ~~except during the first thirty minutes after such device or material is ignited.~~

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

~~(5) **Catalytic cracking units.**~~

- ~~(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:~~
 - ~~(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit~~

~~which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.~~

~~(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.~~

~~(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.~~

~~(6)(5) Other wood waste burners.~~

~~(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of:~~

~~(i) WAC 173-400-040 and -050;~~

~~(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and~~

~~(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).~~

~~In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 C.F.R. 60 subpart DDDD) must meet all applicable provisions of those sections.~~

~~(a)(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.~~

~~(7) 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.~~

~~(8)(6) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991~~

WAC 173-400-081 Emission limits during startup and shutdown.

(1) In promulgating technology-based emission standards and establishing emission limitations when making control technology determinations (e.g., BACT, RACT, LAER, BART) the permitting ~~authorities~~ authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

Commented [GE(42)]: Does a wood waste burner include hog fuel boiler, or a wigwam and silo burners? What is the difference between these? Do we need a definition for each?

Commented [GE(43)]: EPA commented that we needed to include requirements for new (subpart CCCC) and existing (subpart III) commercial and industrial solid waste incineration (CISWI) units to avoid confusion.

Commented [DD(44)]: In response to EPA's comment, do we need definition of woodwaste burner that we want to address in this rule? Or just maintain reference to 40 CFR 60 subpart DDDD

Commented [ARN45R44]: Subpart DDDD would apply to some wood waste incinerators/burner, thus why we included this reference in the past.

Commented [GE(46R44)]: Rule digression moment. Subpart DDDD applies to existing CISWI units. While the rule is located in the NSPS section, it's not really an NSPS, it's an an emissions guideline. You can't adopt an emissions guideline by reference because a guideline doesn't include an enforceable compliance date. It includes a suggested date or date range that a state or EPA makes enforceable by adopting their own rule. EPA's Part 62 rule applies to sources in states like Washington that did not adopt their own part DDDD rule, submit a plan to EPA, and have EPA approve their plan. Rather than adopt a rule and submit a plan, Ecology sometimes waits until EPA has adopted its Part 62 rule before adopting it by reference. 050(7) in this rulemaking is an example of that.

Commented [GE(47)]: FYI. "Emission limitation" is a defined term that includes work practices.

Commented [ARN48R47]: Covered in (2) below.

- (2) ~~Where-When~~ the permitting authority determines, as part of its control technology determination, that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission limitation or standard during startup or shutdown, the permitting authority must include in the standard or regulatory order appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the source during startup or shutdown conditions.
- (3) In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the permitting authorities shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.
- (4) Any emission limitation or other parameter adopted under this rule which increases allowable emissions during startup or shutdown conditions over levels authorized in Washington's state implementation plan SIP shall not take effect until the requirements and procedures in WAC 173-400-082(4) are complied with approved by EPA as a SIP amendment.

Commented [GE(49): Increases must go thru 082 process.

Commented [GE(50): 082(3) includes approval by EPA as SIP amendment.

(NEW) WAC 173-400-082 Establishing an emission limitation for startup, shutdown, and other operating modes that exceeds a standard in the SIP through a SIP revision.

Commented [GE(51): "through a SIP revision" is an EPA suggested change.

- (1) The owner or operator of a source or stationary source may request an alternative emission limitation that applies to a specific emission unit(s) during a clearly defined mode of operation. The alternative emission limitation established under this section becomes a source-specific SIP emission standard.
- (2) An alternative emission limitation may be established under this section for any of the following SIP-approved emission standards:
 - (a) Opacity emission standard in:
 - (i) WAC 173-400-040 (2);
 - (ii) WAC 173-405-040(6);
 - (iii) WAC 173-415-030(3) and(3)(a); and
 - (iv) WAC 1730434-130(4).
 - (b) Sulfur dioxide emission standard in:
 - (i) WAC 173-400-040 (7);
 - (ii) WAC 173-405-040 (11);
 - (iii) WAC 173-410-040 (1);
 - (iv) WAC 173-415-030(5); and
 - (v) WAC 173-434-130(3).
 - (c) Particulate matter emission standards in:

Commented [GE(52): WSPA comments that this list is unnecessary. Ecology believes it clarifies which standards that are in play.

- (i) WAC 173-400-050 (1) and -060;
- (ii) WAC 173-405-040 (1)(a), (2), (3)(a), and (5);
- (iii) WAC 173-410-040 (2);
- (iv) WAC 173-415-030(2); and
- (v) WAC 173-434-130(1).

(d) Emission standards contained in a local air pollution control authority regulation that has been approved into the SIP in 40 CFR 52.2470.

(3) Owner or operator requirements to request an alternative emission limitation.

(a) The owner or operator may request an alternative emission limitation applicable to a specific mode of operation that exceeds a standard in the SIP. A mode of operation for an emission unit may include periods of startup, shutdown, maintenance, or other transient (short-term) operation.

(b) A request for an alternative emission limitation must be submitted to the permitting authority in writing. The permitting authority shall determine the adequacy of the information.

(c) The request for an alternative emission limitation must include all of the following information:

- (i) Specify which emission unit(s) and specific mode of operation the requested alternative emission limitation is to cover.
- (ii) Describe the operating characteristics of the emission unit(s) for which the alternative emission standard is being requested that prevent meeting the otherwise applicable emission standard during the specific mode of operation. Operating characteristics include installed emission control equipment, work practices, or other means of emission control.
- (iii) Describe why it is not technologically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit or stationary source to comply with the SIP emission standard, and avoid the need for an alternative emission standard.
- (iv) Demonstrate that the ambient air quality standards in chapter 173-476 WAC and when applicable, PSD increments will not be exceeded as a result of the proposed alternative limitation. When the permitting authority requires modeling:

(A) The demonstration must be based on the potential worst-case emissions that could occur based on application of the requested specific mode of operation.

Commented [GE(53)]: Fed rule in (c) lists SIP approved rules in tables 3 thru 10.

Commented [GE(54)]: WSPA and local air agencies suggest that Ecology draft this provision as broadly as possible to apply to other scenarios. Ecology expanded the provision to apply to a "specific mode of operation."

Commented [DD(55)]: To avoid confusion with the meaning of operating scenario in WAC 173-401-650, we are using "specific mode of operation" over "operating acenario." EPA is also using "mode of operation" in the SSM SIP call.

Commented [DD(56)]: "Other transient mode of operation" allows to handle requests for alternative emission limitation for other operating modes other than SSM.

Commented [GE(57)]: WSPA objects to the phrase "to the satisfaction of the permitting authority" because the rule must "inform the regulated community what they must do to comply. No rule should vest a permitting authority with unbounded discretion to accept or reject an application based on "satisfaction."

Ecology provided more detail on the required demonstration to avoid the unbounded discretion of the permitting authority. The decision on adequacy of that demonstration is the permitting authority's.

Commented [DD(58)]: These criteria were based on EPA's longstanding seven criteria for setting alternative emission limitation (80 FR 33980 - 33914) and other states experience. Ordered as follows:

- (i) and (iii) as prerequisite for requesting alternative
- (v) overarching goal to meet: NAAQS/PSD increment
- (v) all the criteria

Commented [DD(59)]: These criteria were based on EPA's longstanding seven criteria for setting alternative ...

Commented [DD(60)]: This was drafted based on the experience of other states, specifically Florida. This was to ...

Commented [GE(61)]: WSPA comments that it is not always possible at a refinery to follow O & M procedures. ...

Commented [GE(62)]: Ecology disagrees with EPA's comment that technical infeasibility applies to the relevant source category. "Limiting this to the existing control syst ...

Commented [ARN63R62]: I think EPA is misreading their criterion. The 7 factors listed criteria in 80 FR 33980 would apply to an alternative established for a source ...

Commented [DD(64)]: EPA commented that the PSD increment should also be protected when such alternative emission revision is done..

Commented [GE(65)]: Lyn Tober wondered if requiring A and B is double counting.

Commented [GE(66)]: EPA recommends we consider the potential worst case scenario that could occur during startup and shutdown as part of a justification of a SIP revision ...

(B) It must include the effects of background concentrations and emissions from adjacent facilities.

Commented [GE(67)]: WSPA comments that sometimes emissions from adjacent facilities are a key part of the analysis; other times a regional background will suffice.

(v) The proposed alternative emission limitation must:

Commented [GE(68)]: WSPA disagrees that O & M procedures are part of the limit. Ecology disagrees.

(A) Reflect best operational practices for the emission unit(s) involved;

(B) Minimize the frequency and duration of the specific mode of operation to the shortest practicable amount of time;

Commented [DD(69)]: Equivalent to earlier (v) and EPA's (3) on 33980

(C) Minimize the quantity and impact of the emissions resulting from the specific operating scenario;

WSPA wonders why a limit must minimize the frequency and duration.

(D) Not exceed an emission standard applicable to the emission unit in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption for the specific operating modes in the applicable regulation do not apply.

Commented [DD(70)]: Equivalent to earlier (ii) and EPA's (5) on 33980.

Commented [DD(71)]: Last sentence added from 80 FR 33978 column 1. Existing affirmative defense and exemptions in NSPS and NESHAP must be inapplicable to SIP emission limitation.

(4) Regulatory order.

(a) The permitting authority must notify the applicant that a request for an alternate emission limitation is complete or incomplete. The permitting authority must include the reasons they find the request incomplete.

Commented [GE(72)]: Clarifies for both parties how a request is processed.

(b) The permitting authority may deny a request for an alternative emission limitation. The denial must include the basis for the denial.

(c) The permitting authority shall include the alternative emission limitation in a regulatory order when it determines the request meets the requirements in (2)(a) and (c) of this section. The regulatory order must include:

(i) The name or other designation used by the source to identify the specific emission unit(s) at the source or stationary source subject to the alternative emission limitation;

(ii) The criteria defining the specific mode of operation, including the criteria for determining when it starts and when it stops, and when the alternative emission limitation is applicable;

Commented [GE(73)]: Is there a better term?

(iii) The emission limitation for the specific mode of operation;

Commented [DD(74)]: The emission limit can also be work practice standard that may not have numerical frequency and duration.

(iv) A requirement that the applicable emission unit(s) are operated in a manner consistent with good operating practices for minimizing emissions during the time the alternative emission limitation is in effect;

- (v) A statement that the alternative emission limitation authorized by the regulatory order is not in effect until the effective date of EPA's incorporation of the alterantive emission limitation in the SIP; and
- (vi) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with any condition established in the order related to the alternative mode of operation and alternative emission limitation.

(d) The permitting authority may assess and collect fees according to their fee schedule.

(e) An order issued under this subsection shall not take effect until all of the following have been successfully completed:

(i) Permitting authority requirements. The permitting authority must:

(A) Hold a mandatory public comment period in compliance with WAC 173-400-171;

(B) Make available to the public and provide to Ecology at least 30 days in advance of the public hearing:

(I) The public notice;

(II) A copy of the proposed order;

(III) A technical support document or other documentation prepared by the permitting authority showing its analysis of the request; and

(IV) A demonstration that the proposed alternative emission limitation is consistent with the purposes of chapter 70.94 RCW as required by RCW 70.94.380(1).

(C) Send to Ecology:

(I) A request that Ecology submit the order to EPA to include in the SIP;

(II) The final order; and

(III) Information supporting the request in a format required by Ecology.

(ii) Ecology requirements.

Commented [GE(75)]: Ecology included these provisions based on RCW 70.94.380(1). We want to establish an approval process that uses the existing process with as few additional steps as possible.

Commented [GE(76)]: This provision reduces Ecology's SIP processing time by ensuring the requesting agency provides all SIP-related material with their request. The details will be worked out in an implementation plan.

- (A) Ecology will inform the permitting authority and the owner or operator of the source or stationary source of its acceptance or denial of the request for an alternative emission limit within 60 days of receiving a request from the permitting authority;
 - (B) Ecology approves the request by holding a public hearing consistent with WAC 173-400-171(12) and submits the regulatory order to EPA as a SIP amendment.
 - (C) If Ecology denies the request, notify the permitting authority and the owner or operator of the source or stationary source of the reasons for the denial.
- (iii) If EPA approves the order as a SIP amendment, the order is effective on the effective date of EPA's approval.

WAC 173-400-107 Excess emissions.

Possible sunset dates for this provision:

- Effective date of EPA's removal of the 9/20/93 version from the SIP (EPA option)
- May 22, 2018 (18 months after the EPA SIP call deadline) (Ecology option)
- WSPA option:

This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. ~~This section is not effective starting on that date.~~

This section is in effect until the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section. This section is not effective starting on that date.

- (1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.
- (2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.
- (3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the

known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

- (4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) 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.
- (5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) 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.
- (6) Excess emissions due to upsets shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:
 - (a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;
 - (b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and
 - (c) 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.

WAC 173-400-108 Excess emissions reporting. [State-only requirement not federally enforceable]

~~This section takes effect on the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.~~

- (1) ~~Excess emissions must be reported to the permitting authority. Excess emissions which represent a potential threat to human health or safety must be reported as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Excess emissions which the owner or operator of the source believes to be unavoidable, per the criteria under WAC 173-400-109, must be reported to the permitting authority as soon as possible after the excess emissions were discovered.~~

Notify the permitting authority.

Commented [GE(77)]: Reporting unavoidable excess emissions relocated to the report that is required 30 days after the incident. We've removed the additional requirement for notice "as soon as possible" because a permitting authority doesn't act on that notice.

~~(i) The owner or operator must notify its permitting authority when excess emissions represent a potential threat to human health or safety as soon as possible, but not later than twelve hours after the excess emissions were discovered.~~

Commented [DD(78)]: No notification details means any notification method is OK.

~~(ii) For all other excess emissions, the owner or operator must notify its permitting authority within 30 days after the end of the month during which the excess emissions event occurred.~~

~~(2) Report. The owner or operator must report all excess emissions to the permitting authority:~~

~~(i) Chapter 173-401 WAC source:~~

~~(A) As provided in WAC 173-401-615(3).~~

~~(B) To claim emissions as unavoidable under WAC 173-400-109, the report must contain the information in (3)(f) and (4) of this section.~~

Commented [GE(79)]: WSPA recommends clarifying applicability to Title V sources. The restructured section addresses this concern.

~~(ii) All other sources:~~

~~(A) Within thirty days after the end of the month during which the event occurred; or~~

~~(B) As part of the next routine emission monitoring report.~~

~~Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.~~

~~(2)(3) For those sources not required to report under WAC 173-401-615, ~~t~~he report must contain at least the following information:~~

~~(a) Date, time, duration of the episode;~~

~~(b) Known causes;~~

~~(c) For exceedances of ~~nonopacity~~-emission limitations other than opacity, an estimate of the quantity of excess emissions;~~

~~(d) The corrective actions taken; ~~and~~~~

~~(e) The preventive measures taken or planned to minimize the chance of recurrence; ~~and~~~~

~~(f) Information in (4) of this section to claim an excess emissions event is unavoidable.~~

~~(g) Exemption. A chapter 147-401 source must report equivalent information under WAC 173-401-615 so it is exempt from (a) through (e) of this subsection. Subsection (f) continues to apply.~~

~~(3)(4)~~ For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must also include the following information ~~in addition to that required in subsection (2) of this section:~~

- (a) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;
- (b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and
- (c) All additional information required under WAC 173-400-109 ~~(3), (4) or (5)(2), (3), (4), (5) or (6)~~ supporting the claim that the excess emissions were unavoidable.

WAC 173-400-109 Unavoidable excess emissions. [State-only requirement not federally enforceable]

~~This section takes effect on the effective date of EPA's incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.~~

~~The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.~~

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, ~~regulation~~rule, permit, or regulatory order.

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source.

(b) Excess emissions determined by the permitting authority to be unavoidable are:

(i) A violation subject to WAC 173-400-230 (3), (4), and (6); and

(ii) Not subject to civil penalty under WAC 173-400-230(2).

Nothing in a state rule limits a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action.

Note: Nothing in state rule affects the statutory authority of the courts to determine liability and impose remedies from provisions of the federal CAA.

Commented [GE(80)]: WSPA recommends leaving this section intact until EPA clarifies its criteria for review of SIP SSM rules.
Ecology is designing its program to comply with the 2015 SSM SIP Policy in 80 FR 33976 – 33982.

Commented [GE(81)]: WSPA comment from Texas SIP response.
EPA said we they wouldn't put the struck-out version in the SIP because they felt it directs the court. I think the substitution is a more neutral statement.

Commented [ARN82R81]: This is a less detailed version of what was already crossed out.

~~Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority, however, in a federal enforcement action filed under 42 U.S.C. § 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (3), (4), and (5) of this section.~~

- (2) ~~(a)~~ The owner or operator of a source shall have the burden of proving to the permitting authority ~~or the decision-making authority~~ in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections ~~(3)~~ and (4) of this section.

Commented [ARN83]: I think these should just be (2) and (3). They aren't related enough to group together.

~~(a) [formatting glitch];~~

~~(b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.~~

- (3) ~~(c)~~ This section does not apply to exceedances of emission standards ~~promulgated under~~ in 40 C.F.R. Parts 60, 61, 62, 63, ~~and 72~~ (in effect on the date in WAC 173-400-025), or a permitting authority's adoption by reference of ~~such these~~ federal standards.

- (4) ~~(d)~~ This section does not apply to ~~an~~ exceedance of emission limits and standards ~~contained~~ in a PSD permit issued solely by EPA.

- ~~(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:~~

~~(a) Excess emissions could not have been prevented through careful planning and design;~~

~~(b) Startup or shutdown was done as expeditiously as practicable;~~

~~(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;~~

~~(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;~~

~~(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and~~

- (5) ~~(f)~~ Excess emissions that occur due to upsets or malfunctions during ~~routine~~ startup or shutdown are treated as upsets or malfunctions under subsection ~~(56)~~ of this section.

- ~~(4) Maintenance. Excess emissions during scheduled maintenance may be considered unavoidable if the source reports as required by WAC 173-400-108 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.~~

~~(5)~~(6) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and demonstrates to the permitting authority that:

- (a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;
- (b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (c) When the operator knew or should have known that an emission standard or permit condition was being exceeded, the operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action~~-. Actions taken could include~~ slowing or shutting down the emission unit or source as necessary to minimize emissions~~;- when the operator knew or should have known that an emission standard or permit condition was being exceeded; and~~
- ~~(d)~~ If the emitting equipment had to continue operation during the malfunction for safety reasons to prevent the loss of life, prevent personal injury, or to minimize overall emissions, repairs were made in an expeditious fashion;
- ~~(d)~~(e) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage~~;- and~~
- ~~(f)~~ The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible~~;- and~~
- ~~(g)~~ All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

Commented [GE(84): Ecology added to accommodate situations when plant (control equipment) must continue to operate equipment for safety reasons.

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See [81 FR 71613](#).

WAC 173-400-171 Public notice and opportunity for public comment.

The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

- (a) A notice of construction application designated for integrated review with actions regulated by WAC [173-400-700](#) through [173-400-750](#). In such cases, compliance with the public notification requirements of WAC [173-400-740](#) is required.
- (b) Portable source relocation notices as regulated by WAC [173-400-036](#), relocation of portable sources.

(2) **Internet notice of application.**

- (a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.
- (b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.
- (c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.
- (d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, fax, or electronic ~~means~~ during the fifteen-day internet posting period.
- (e) A public comment period must be provided 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 may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) **Actions subject to a mandatory public comment period.**

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

- (a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.
- (b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC [173-400-030](#)) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter [173-460](#) WAC; or
- (c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC [173-400-025](#)) as part of review under WAC [173-400-110](#), [173-400-113](#), or [173-400-117](#); or
- (d) Any order to determine reasonably available control technology, RACT; or
- (e) An order to establish a compliance schedule issued under WAC [173-400-161](#), or a variance issued under WAC [173-400-180](#); or
Note: Mandatory notice is not required for compliance orders issued under WAC [173-400-230](#).
- (f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, 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; or
- (g) An order to authorize a bubble; or
- (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC [173-400-136](#); or
- (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or
- (j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or
- (k) Any order issued under WAC [173-400-091](#) that establishes limitations on a source's potential to emit; or

- (l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or
- (m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or
- (n) Any application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-082.

(4) **Advertising the mandatory public comment period.**

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must ~~posted on the permitting authority web site for the duration of the public comment period. Duration does not require uninterrupted web site access.~~

(i) The permitting authority may supplement this method of notification by ~~advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. be given by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal.~~

(ii) Require notification in newspaper until July 1, 2018.

(b) This public notice can be ~~published~~ posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

(c) The notice must be ~~published~~ posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied.

(d) The applicant or other initiator of the action must pay the publishing cost of providing public notice in a newspaper ~~if the permitting authority determines supplemental noticing is required.~~

(5) **Information available for public review.**

(a) ~~Administrative record.~~ The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection ~~in at least one location near the proposed project. A permitting authority may comply with this requirement by making these materials available on their web site or in at least one physical location near the proposed project.~~

Commented [ARN85]: This is a defined term in other Ecology programs (principally Water Resources) and defines specific types of newspapers that meet this criteria in various areas of the state. A newspaper meeting this criteria is usually a daily paper, but can be a weekly paper specific to a rural area.

Commented [DD(86): Corrections made for consistency with WAC 173-401-800(2)(b).

(b) The permitting authority must post the following information on their web site for the duration of the public comment period:

(A) Public notice complying with subsection (6) of this section;

(B) Draft permit; and

(C) Information on how to access the administrative record.

(D) Duration does not require uninterrupted web site access.

(c) Exemptions from this requirement include information protected from disclosure under any applicable law including, but not limited to, RCW [70.94.205](#) and chapter [173-03](#) WAC.

(6) Public notice components. Public notice must be posted at least by the start date of the public comment period.

(a) The notice must include:

(i) The date the public notice is posted;

~~(ii)~~ (ii) The name and address of the owner or operator and the facility;

~~(iii)~~ (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

~~(iv)~~ (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

~~(v)~~ (v) The location where those documents made available for public inspection may be reviewed;

~~(vi)~~ (vi) Start date and end date for a thirty-day public comment period. If a holiday falls within this period, that is not considered a day. A thirty-day period for submitting written comment to the permitting authority;

(vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

~~(viii)~~ (viii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC [173-400-117](#), public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

Commented [GE(87)]: Added to reflect the best practice for a public comment period.

- (7) **Length of the public comment period.**
- (a) The public comment period must extend at least thirty days prior to any hearing.
 - (b) If a public hearing is held, the public comment period must extend through the hearing date.
 - (c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.
- (8) **Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, ~~fax,~~ or electronic ~~means mail~~. A request must indicate the interest of the entity filing it and why a hearing is warranted.
- (9) **Setting the hearing date and providing hearing notice.** If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.
- (10) **Notice of public hearing.**
- (a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:
 - (i) ~~Give Post~~ the public hearing notice on the permitting authority web site as directed by (4) of this section;
 - (ii) ~~The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal;~~ and
 - (iii) ~~Mail~~ Distribute by electronic means or postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.
 - (b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.
 - (c) In the case of a permit action, the applicant must pay all supplemental notice publishing costs if the permitting authority determines a supplemental notice is appropriate, associated with meeting the requirements of this subsection. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed source.

Commented [ARN88]: This is implied, in 10(c), but not stated.

(11) Notifying the EPA.

The permitting authority must ~~send~~ distribute by electronic means or postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) Special requirements for ecology only actions.

- (a) This subsection applies to ecology only actions including:
- (i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;
 - (ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC [173-400-118](#), and rules to strengthen the SIP.
- (b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.
- (c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC [173-400-025](#)).

(13) 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.

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See [81 FR 71613](#).

WAC 173-400-740 Permitting public involvement requirements.

- (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC [173-400-720](#):

- (a) Any preliminary determination to approve or disapprove a PSD permit application; or
 - (b) An extension of the time to begin construction or suspend construction under a PSD permit; or
 - (c) A revision to a PSD permit, except an administrative amendment to an existing permit; or
 - (d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC [173-400-025](#)) as part of review of air quality impacts.
- (2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC [173-400-730\(6\)](#), or after receipt of a nonadministrative revision to a PSD permit under WAC [173-400-750](#), ecology shall:
- (a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available on ecology's web site or at a physical location.
 - (i) Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post online on a web site but may be made available as part of the permit record either as hardcopy or on a data storage device.
 - (ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW [70.94.205](#) and chapter [173-03](#) WAC.
 - (b) Notify the public by:

~~Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC [173-400-730\(4\)](#). The date the public notice is published in the newspaper starts the required thirty day comment period.~~

 - (i) Posting the following information on ecology's web site for the duration of the public comment period:
 - (A) Public notice elements in (3) of this section;
 - (B) PSD draft permit;
 - (C) PSD technical support document; and

(D) Information on how to access the administrative record.

(E) Duration does not require uninterrupted web site access.

(ii) If ecology grants a request to extend the public comment period, ecology must:

(A) Post the extension notice on the same web site where the original notice was posted;

(B) Specify the closing date of the extended comment period in the extension notice; the extension notice must also be published in a newspaper as noted above and

(C) Distribute a copy of the extension notice sent by electronic means or postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) If ecology determines a supplemental notice is appropriate, the applicant or other initiator of the action must pay the cost of providing this public notice. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(c) Send-Distribute by electronic means or postal service a copy of the public notice to:

- (i) Any Indian governing body whose lands may be affected by emissions from the project;
- (ii) The chief executive of the city where the project is located;
- (iii) The chief executive of the county where the project is located;
- (iv) Individuals or organizations that requested notification of the specific project proposal;
- (v) Other individuals who requested notification of PSD permits;
- (vi) Any state within 100 km of the proposed project.

(d) Send-Distribute by electronic means or postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

- (i) The applicant;
- (ii) The affected federal land manager;
- (iii) EPA Region 10;

Commented [GE(89)]: EPA requirement.

- (iv) The permitting authority with authority over the source under chapter 173-401 WAC; and
- (v) Individuals or organizations who request a copy; and
~~The location for public inspection of material required under (a) of this subsection if a physical copy is made available to the public.~~

Commented [GE(90)]: Deleted because (3) requires the notice include this information.

(3) **Public notice content.** The public notice shall contain at least the following information:

- (a) The date the public notice is posted;
- ~~(b)~~ (b) The name and address of the applicant;
- ~~(c)~~ (c) The location of the proposed project;
- ~~(d)~~ (d) A brief description of the project proposal;
- ~~(e)~~ (e) The preliminary determination to approve or disapprove the application;
- ~~(f)~~ (f) How much increment is expected to be consumed by this project;
- ~~(g)~~ (g) The name, address, and telephone number of the person to contact for further information;
- ~~(h)~~ (h) A brief explanation of how to comment on the project;
- ~~(i)~~ (i) An explanation on how to request a public hearing;
- ~~(j)~~ (j) The location of the ~~documents made available for public inspection~~ draft permit and information on how to access the administrative record;
- ~~(k)~~ (k) The start date and end date for a thirty-day public comment period starting from the date of posting notice on the web site. If a holiday falls within this period, that is not considered a day. ~~There is a thirty day period from the date of publication the notice for submitting written comment to ecology;~~
- ~~(l)~~ (l) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;
- ~~(m)~~ (m) The length of the public comment period in the event of a public hearing; and
- ~~(n)~~ (n) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

Commented [GE(91)]: Inserted because this is a best practice for public involvement.

(4) **Public hearings.**

- (a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.
- (b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).
- (c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the

public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same ~~locations~~ website where the preconstruction information on the proposed major source or major modification was made available.

Commented [DD(92): Required by 40 CFR 51.166(q)(2)(vi).

(6) **Issuance of a final determination.**

- (a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:
- (i) A copy of the final PSD permit or the determination to deny the permit;
 - (ii) A summary of the comments received;
 - (iii) Ecology's response to those comments;
 - (iv) A description of what approval conditions changed from the preliminary determination; and
 - (v) A cover letter that includes an explanation of how the final determination may be appealed.

~~(b)~~ Ecology shall post the final determination on the same website where the draft permit and public notice was posted according to (2)(b)(i) of this section.

Commented [DD(93): Addresses EPA's comment that we must comply with 40 CFR 51.166(q)(2)(viii).

~~(b)(c)~~ Ecology shall ~~mail-distribute by electronic means or postal service~~ a copy of the cover letter that accompanies the final determination to:

- (i) Individuals or organizations that requested notification of the specific project proposal; and
- (ii) Other individuals who requested notification of PSD permits.

~~(e)(d)~~ Ecology shall distribute by electronic means or postal service ~~A~~ a copy of the final determination shall ~~be sent~~ to:

- (i) The applicant;
- (ii) U.S. Department of the Interior - National Park Service;
- (iii) U.S. Department of Agriculture - Forest Service;
- (iv) EPA Region 10;
- (v) The permitting authority with authority over the source under chapter 173-401 WAC; and
- (vi) Any person who commented on the preliminary determination; and
- ~~(vii) The location for public inspection of material required under subsection (2)(a) of this section.~~

Commented [DD(94): This is not about the recipients, but where the document should be made available. (6)(b) addresses this point.

Ecology proposes to delete this provision to mirror EPA's proposed action to remove 40 CFR 70.6(g). These enforcement provisions are inconsistent with enforcement structure of the federal Clean Air Act. See 81 FR 38645 on June 14, 2016.

WAC 173-401-645 Emergency provision.

Starting January 1, 2018 this section is no longer effective. A permitting authority must remove this provision from an individual operating permit during the first possible periodic permit renewal, permit modification, or permit reopening after this date.

Commented [GE(95)]: EPA proposed the rule revision in June 2016. EPA proposed that state rules must be updated within 12 months of the effective date of the revised federal rule.

EPA commented that this date appears to be within EPA's proposed timeframe.

- (1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of subsection (3) of this section are met.
- (3) Criteria. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (a) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (b) The permitted facility was at the time being properly operated;
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (d) The permittee submitted notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency or shorter periods of time specified in an applicable requirement. This notice fulfills the requirement of WAC [173-401-615](#) (3)(b) unless the excess emissions represent a potential threat to human health or safety. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (5) Relationship to other rules. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

WAC 173-401-724 Off-permit changes.

- (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification [of the FCAA](#) or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

- (2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
- (3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.
- (4) The change shall not qualify for the permit shield under WAC 173-401-640.
- (5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.
- (6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

Ecology proposes to amend this section to align with EPA's rule on electronic notice and access. See [81 FR 71613](#).

WAC 173-401-800 Public involvement.

- (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.
- (2) Public notice.
 - (a) The permitting authority shall provide public notice for the following actions:
 - (i) Issuance of a draft permit or permit renewal;
 - (ii) Intended denial of a permit application;
 - (iii) Issuance of a draft permit modification;
 - (iv) Issuance of a draft general permit;
 - (v) Scheduling of a public hearing under subsection (4) of this section; and
 - (vi) Any other related activities that the permitting authority considers to involve substantial public interest.
 - (b) ~~Notice shall be given by the following methods: Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in Ecology's Operating Permit Register does not satisfy this requirement. Prominent advertisement may be by publication~~

~~in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.~~

~~(i) Permitting authority web site. A permitting authority must post notice on their web site for the duration of the public comment period. Duration does not require uninterrupted web site access;~~

~~(ii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.~~

~~(iii) *Permit Register*.~~

~~(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.~~

~~(B) The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.~~

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive ~~such this~~ notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

- (i) Name and address of the permitting authority;
- (ii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;
- (iii) A brief description of the business conducted at the facility and activity involved in the permit action;
- (iv) Name, address, and telephone number of a person (or an email or web site address) from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

Commented [GE96]: EPA commented that 40 CFR 70.7(h)(2) requires public notice content to include an email or web address.

- (v) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and
- (vi) A description of the emission change involved in any permit modification.

(e) Availability for public inspection.

(i) The permitting authority must post the draft permit and technical support document on their web site. Access to some materials comprising the permit record (such as air quality modeling data) may be too large to post on a web site but may be made available as part of the administrative record either as hardcopy or on a data storage device.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source. This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application, ~~draft permit~~ and supporting materials.

~~Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.~~

Commented [GE97]: Deleted because I don't believe this provision has ever been used.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section.

(a) This comment period begins on the date of posting notice on their web site; publication of notice in the Permit Register or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later.

Commented [GE98]: Ecology proposes to separate the start of the comment period with publication in the Permit Register or newspaper. This design reflects a 20 year old system when there wasn't simple access via the web to permit information. Agencies will continue to send this information to the Permit Register and Ecology will continue to publish the register on the web. The difference is that the triggering action will be publishing notice on the agency web site, instead of the latter date of web site or Permit Register posting date. Interested parties can get on an agency distribution list for this information as well.

(b) No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

- (5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.