



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: April 23, 2019

TIME: 3:52 PM

WSR 19-10-028

Agency: Department of Ecology AO # 18-03

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

These three rules adopt by reference some provisions from Chapter 173-400 WAC applicable during startup, shutdown, and malfunction (SSM). The following SSM provisions in Chapter 173-400 WAC would take effect on the effective date of Environmental Protection Agency's (EPA) removal of WAC 173-400-107 from the Washington State Implementation Plan (SIP):

- Alternative opacity emission standards for:
 - Soot blowing and grate cleaning,
 - Startup and shutdown of hog fuel or wood-fired boiler with dry particulate matter controls, and
 - Furnace refractory curing.
- Excess emissions reporting – WAC 173-400-108.
- Unavoidable excess emissions – WAC 173-400-109.

The following provisions remain in effect until EPA removes WAC 173-400-107 from the SIP:

- Unavoidable excess emissions – WAC 173-400-107, and
- Exemptions from opacity emission standards for soot blowing/grate cleaning and orchard heating.

Purpose: The amendments focused on the following statewide air quality rules that are enacted under RCW 70.94.395 to set requirements and standards for pulping mills, and primary aluminum plants:

- Chapter 173-405 WAC - Kraft Pulping Mills,
- Chapter 173-410 WAC - Sulfite Pulping Mills, and
- Chapter 173-415 WAC - Primary Aluminum Plants.

The primary purpose of this revision is to align these three statewide rules with the General Regulations for Air Pollution Sources (Chapter 173-400 WAC), the federal Clean Air Act (CAA), and EPA SSM policy.

The CAA and EPA's SSM policy require emission standards to apply continuously without automatic or discretionary exemptions, even during periods of SSM. Contrary to the CAA requirements and EPA SSM policy, Chapter 173-400 WAC exempted or allowed a source to avoid an enforcement action for exceedances of emission standards during periods of startup, shutdown, and scheduled maintenance (80 F.R. 33840). EPA determined WAC 173-400-107 had overly broad enforcement discretion that potentially barred enforcement action by EPA and citizens in federal courts (80 F.R. 33840). On August 16, 2018, Ecology adopted amendments to Chapter 173-400 WAC to correct EPA-identified deficiencies, and meet the CAA requirements and SSM policy that allow comprehensive enforcement of applicable requirements.

This rulemaking harmonizes Chapters 173-405, 173-410, and 173-415 WAC with Chapter 173-400 WAC through adoption by reference of the SSM related provisions to:

- Remove impermissible provisions that shield sources from civil penalties for excess emissions during startup, shutdown, and scheduled maintenance.
- Establish alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of hog-fuel boilers with dry particulate controls.
- Outline the process for establishing facility-specific alternative emission limits for specific short-term operation modes like SSM that exceed the otherwise applicable emission standards in the SIP.
- Simplify the excess emission notification and reporting requirements.

We also made other amendments that include:

- Extending the time allowed for submission of source testing reports to 60 days instead of 15 days for pulping mills and 30 days for primary aluminum plants. We did this to provide a more realistic timeframe to complete and submit a source test report to Ecology.
- Deleting provisions that are outdated and not applicable to facilities covered by these rules.
- Correcting typos and citations, and clarifying rule language without changing the intent of the rules.

Citation of rules affected by this order:

New: WAC 173-415-075

Repealed: 0

Amended: WAC 173-405-021, 040, 072, 077, 086, 087; WAC 173-410-021, 040, 062, 067, 086, 087; and WAC 173-415-015, 030, 060.

Suspended: 0

Statutory authority for adoption: Chapter 70.94 RCW Washington Clean Air Act , RCW 70.94.395

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-22-124 on November 07, 2018 (date).

Describe any changes other than editing from proposed to adopted version: For more details, refer to the [Concise Explanatory Statement at https://fortress.wa.gov/ecy/publications/summarypages/1902007.html](https://fortress.wa.gov/ecy/publications/summarypages/1902007.html).

WAC 173-415-030 Emission Standards

- (7) After considering the public comments on the proposed rule, Ecology decided not to adopt the amendments in WAC 173-415-030(7) that are related to performance testing frequency for secondary total fluoride (TF) emissions from potlines of primary aluminum plants. We decided this in order to achieve the primary purpose of this rulemaking within our established timeline. The primary purpose of this rulemaking is to align the three rules with the new SSM requirements adopted in the Chapter 173-400 WAC, the CAA, and EPA’s SSM policy. Ecology will continue to evaluate the options to address fluoride emissions monitoring frequency in a future action, in a manner that protects human health and the environment and meets the needs of the stakeholders.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Debebe Dererie

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Air Quality Program
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Olympia, WA 98504-7600

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TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711)

Email: debebe.dererie@ecy.wa.gov

Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/1902006.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>1</u>	Amended	<u>5</u>	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>6</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>4</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: April 23, 2019

Name: Maia D. Bellon

Title: Director

Signature:

