

WSR 11-06-001
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 16, 2011, 3:12 p.m., effective March 19, 2011]

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

Purpose: Chapter 314, Laws of 2009 (SSB 5665), provides authority for affordable housing entities to jointly self-insure property and liability risks in a multiple state risk sharing program regulated by the state risk manager. The bill was codified as chapter 48.64 RCW. RCW 48.64.015 requires the state risk manager to adopt rules that include standards for management, operations, and solvency, including frequency of actuarial analyses and claims audits. The rules are to include standards for claims management procedures. The rules must also include standards for contracts between joint self-insurance programs and private business, including standards for contracts between third party administrators and joint self-insurance programs. RCW 48.64.020 also requires the state risk manager to adopt rules further clarifying the definitions of "affordable housing" and "affordable housing entity," including rules which define the conditions and limitations under which affordable housing entities may participate or be expelled from the joint self-insurance program.

One of the outcomes of this rule-making process is to create a new chapter under office of financial management, Title 82 WAC, where all the rules related to self-insurance are found.

Statutory Authority for Adoption: Chapter 48.64 RCW; RCW 48.64.015 and 42.64.020.

Adopted under notice filed as WSR 10-22-106 on November 2, 2010.

Changes Other than Editing from Proposed to Adopted Version: In responding to comments received; the following changes were made: WAC 82-70-020, revised definition of "consultant" to specifically identify consultants as third-party administrators, actuaries, claims auditors and brokers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 27, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 27, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 27, Amended 0, Repealed 0.

Date Adopted: February 16, 2011.

Roselyn Marcus
 Director of Legal Affairs
 Rules Coordinator

Chapter 82-70 WAC

**AFFORDABLE HOUSING ENTITY JOINT SELF-
 INSURANCE PROPERTY AND LIABILITY PRO-
 GRAM REQUIREMENTS**

NEW SECTION

WAC 82-70-010 Preamble and authority. These rules governing affordable housing self-insurance transactions are adopted by the state risk manager to implement chapter 48.64 RCW relating to the management and operations of a joint affordable housing entity property and liability self-insurance program.

NEW SECTION

WAC 82-70-020 Definitions. "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

"Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income, adjusted for family size.

"Affordable housing entity" means any of the following:

(a) A housing authority created under the laws of this state or another state and any agency or instrumentality of a housing authority including, but not limited to, a legal entity created to conduct a joint self-insurance program for housing authorities that is operating in accordance with chapter 48.62 RCW; a nonprofit corporation shall be considered an "agency" of a housing authority if the nonprofit corporation is fulfilling one or more purposes of a housing authority and is affiliated with a housing authority that:

(i) Has, or has the right to acquire a membership interest in the nonprofit corporation;

(ii) Has provided financing to the nonprofit corporation;

(iii) Has entered into a contract with a nonprofit corporation to provide staff, management services or property management services; or

(iv) Has transferred or leased affordable housing to the nonprofit corporation or is leasing affordable housing from the nonprofit corporation; a nonprofit corporation shall be considered an "instrumentality" of a housing authority if the nonprofit corporation is fulfilling one or more functions of a housing authority and whose assets, operations or management are subject to control by the housing authority by reason of contracts, affiliation, legal structure or otherwise including, but not limited to:

(A) The housing authority organizing the nonprofit corporation;

(B) Directors or employees of the housing authority serving as directors of the nonprofit corporation;

(C) The nonprofit corporation utilizing housing authority funds or assets to carry out housing functions; or

(D) The housing authority possessing the power to direct the management or policies of the nonprofit corporation or being under common control with the nonprofit corporation;

(b) A nonprofit corporation that is engaged in providing affordable housing and is necessary for the completion, management, or operation of a project because of its access to funding sources that are not available to a housing authority; or

(c) A general or limited partnership or limited liability company, whether organized under the laws of this state or another state, that is engaged in providing affordable housing; a partnership or limited liability company may only be considered an affordable housing entity if a housing authority (including any agency or instrumentality of a housing authority) or nonprofit corporation, as described above, satisfies any one of the following conditions:

(i) It has, or has the right to, acquire a financial or ownership interest in the partnership or limited liability company;

(ii) It possesses the power to direct management or policies of the partnership or limited liability company; or

(iii) It has entered into a contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

"Board of directors" means the individuals vested with overall management of the joint self-insurance program; management of the joint self-insurance program shall be exercised by or under the authority of the board of directors, and the affairs of the joint self-insurance program shall be managed under the direction of the board of directors.

"Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

"Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

"Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

"Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

"Claims auditor" means a person who has the following qualifications:

(a) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(b) Proof of professional liability insurance; and

(c) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

"Competitive process" means a documented procurement process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation

requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

"Consultant" means an independent individual or private business contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, and rendering an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

"Contribution" means the moneys paid by the participants to a joint self-insurance program.

"Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of an owner of a joint self-insurance program formed under this chapter.

"Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the joint self-insurance program as of the date of the financial statement. IBNR claims include:

(a) Known loss events that are expected to be presented later as claims;

(b) Unknown loss events that are expected to become claims; and

(c) Future development on claims already reported.

"Joint self-insurance program" means any two or more affordable housing entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.64 RCW.

"Nonowner participant" means an affordable housing entity that:

(a) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(b) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; and

(c) Has no ownership interest in the joint self-insurance program.

"Nonprofit corporation" means a nonprofit corporation organized under the laws of this state or the laws of any other state, of which no part of the income of the nonprofit corporation is distributable to its members, directors or officers.

"Owner" means an affordable housing entity that has the rights and obligations of ownership in the joint self-insurance program and satisfies the requirements in either (a) or (b) of this definition:

(a) The affordable housing entity acquires an ownership interest in the joint self-insurance program by making a financial contribution; and

(i) Is a signatory to a joint self-insurance program's ownership agreement;

(ii) Obtains approval to join the joint self-insurance program from the governing body of the owner, which approval shall be by resolution or ordinance of the governing body as appropriate for the entity type;

(iii) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(iv) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; or

(b) The affordable housing entity acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership of another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution and:

(i) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW; and

(ii) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW.

"Ownership agreement" means the written agreement that sets forth the rights and obligations of the owners in a joint self-insurance program authorized by chapter 48.64 RCW.

"Participant" means either an owner or nonowner participant or both in a joint self-insurance program authorized by chapter 48.64 RCW.

"Primary assets" means cash and investments (less any nonclaims liabilities).

"Risk sharing" means that the participant of a joint self-insurance program jointly absorbs certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated loss; and/or jointly purchase insurance or reinsurance through a joint self-insurance program formed under chapter 48.64 RCW.

"Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

"Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of coverage in the excess or self-insured retention portion of the joint self-insurance programs.

"Stop-loss insurance" means a promise by an insurance company or other insurance provider that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

"Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

"Unallocated loss adjustment expense" or "ULAE" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

"Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss, loss adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

NEW SECTION

WAC 82-70-030 Standards for operation—Participation. Only participants may participate in risk-sharing in a joint self-insurance program.

NEW SECTION

WAC 82-70-050 Standards for operation—Communication with participants—Annual membership report. The joint self-insurance program shall make available to each participant an annual membership report which includes a copy of the program's annual audited financial statements. The annual report may also include other information as determined by the board of directors. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 82-70-060 Standards for operations—Meetings. All joint self-insurance programs authorized by chapter 48.64 RCW are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-70-070 Standards for operation—Notice of regular meetings of the board of directors or owners. Every joint self-insurance program shall provide every participant with a notice of the time and place of each regular meeting of the board of directors or owners at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to participants in the same form, manner and time as provided to participants. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

NEW SECTION

WAC 82-70-080 Standards for operation—Notice of special meetings of the board or directors or owners. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings of the board of directors or owners. In addition, programs shall provide notice by electronic mail to the state risk manager and every participant of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-70-090 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program will provide the state risk manager and every participant with a preliminary agenda in advance of each meeting of the board of directors or owners. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-70-100 Standards for operation—Notification of amendments to ownership agreement. Every joint self-insurance program shall provide notification of the intent to amend the ownership agreement to each owner and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed amendment will occur. Such notification shall include a copy of proposed amendments.

NEW SECTION

WAC 82-70-110 Standards for operation—Amendments to ownership agreement. (1) Any amendments to ownership agreement shall be approved by the board of directors before being submitted to the owners for approval. Each owner shall be notified that one of the purposes of the meeting of the owners is to consider the proposed amendments to the ownership agreement, accompanied by a copy of the proposed amendments. Any amendments to the ownership agreement shall be approved by a majority in interest of the owners, or by a greater vote if provided for in the ownership agreement. Amendment to the ownership agreement shall be approved by the vote of the owners during a regular or special meeting of the owners or by the submission of written mail-in ballots. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. If written mail-in ballots are used, the ballots are to be secured and remain unopened until the next meeting of the board of directors. The opening and counting of the written mail-in ballots shall be conducted by the board of directors during its next meeting and retained in compliance with public records retention laws. Each proxy or written mail-in ballot shall be read orally as to the owner name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) The ownership agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) The addition or termination of owners or nonowner participants in the joint self-insurance program shall not be considered an amendment to the ownership agreement.

NEW SECTION

WAC 82-70-120 Standards for operation—Elections of the board of directors. (1) All or a majority of the board of directors of every joint self-insurance program shall be elected by the owners. Unless otherwise provided in the

ownership agreement, the directors shall be elected by a plurality of the votes cast by the owners at a regular meeting of the owners at which at least one-third of the owners are represented in person or by proxy. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. Each proxy shall be read orally as to the owner name and vote and recorded in the meeting minutes. Voting for directors by written mail-in ballot shall not be permitted.

(2) The board of directors shall also include two or more individuals who are affiliated with the nonowner participants. These directors shall be elected by either the owners or the nonowner participants or both or shall be appointed by the directors elected by the owners in accordance with subsection (1) of this section.

(3) The ownership agreement may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible.

NEW SECTION

WAC 82-70-130 Standards for management and operation—Adoption of program. The ownership agreement of a joint self-insurance program shall be adopted by resolution or ordinance by the governing body of each owner, unless the owner acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership in another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution. Any such resolution or ordinance shall include, but not be limited to, an acknowledgment that the entity shall be subject to contributions as required by the joint self-insurance program. Copies of each such resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The ownership agreement, along with a list of the owners of the joint self-insurance program, shall be published on the public web site of each joint self-insurance program.

NEW SECTION

WAC 82-70-140 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The board of directors of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets as of fiscal year end shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The board of directors of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, owner equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the board of directors and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

NEW SECTION

WAC 82-70-150 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program contributions. (1) Joint self-insurance program contribution formulas shall include all costs including rating for insured and self-insured layers of coverage. Contribution formulas shall be consistent and shall not unfairly discriminate among the participants relative to the risks covered and the coverage benefits provided under the joint self-insurance program. Contribution formulas shall prohibit public entity participants from subsidizing rates for nonprofit and/or privately owned affordable housing entities.

(2) This provision shall not be construed to prohibit individual choice of coverage by participants from several offered by the joint self-insurance program. The contribution formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The contribution formula shall be available for review by the state risk manager.

NEW SECTION

WAC 82-70-160 Standards for operations—Disclosures. All joint self-insurance programs shall furnish to every participant of the program written statements which describe:

(1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

(2) The procedure for filing a claim against the joint self-insurance program;

(3) The procedure for a participant to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, and other issues; and

(4) General characteristics of the insurance coverage portion of the program.

NEW SECTION

WAC 82-70-170 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All joint self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Participation terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of owners and nonowner participants.

NEW SECTION

WAC 82-70-180 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan or policy approved by the board of directors for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to those laws and regulations applicable to the joint self-insurance program and to the investment guidelines stated in the program's original application approved by the state risk manager; and

(c) The preparation and submission of audited financial statements to the state risk manager within one hundred twenty days after the program's fiscal year end.

(2) No financial plan of a joint self-insurance program shall permit loans to any participant from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

NEW SECTION

WAC 82-70-190 Standards for management—Standards for contracts—Third-party administrator contracts. Before contracting with private businesses for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written procedures approved by the board of directors for contracting with

privately owned third-party administrators. Entering a contract for services shall not relieve the board of directors of the joint self-insurance program of its ultimate oversight, managerial and financial responsibilities. The procedures shall, as a minimum:

- (1) Provide a method of privately owned third-party administrator selection using a competitive process;
- (2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;
- (3) Provide for the confidentiality of the program's information, data and other intellectual property developed or shared during the course of the contract;
- (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;
- (5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;
- (6) Require the compliance with all applicable local, state and federal laws; and
- (7) Establish indemnification provisions and set forth insurance requirements between the parties.

NEW SECTION

WAC 82-70-210 Standards for operation and management—Risk management. All joint self-insurance programs formed under this chapter shall have a written risk management program which includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

NEW SECTION

WAC 82-70-220 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

- (a) Claims filing procedures and forms.
- (b) Standards requiring case reserves for each claim be established in the amount of the undiscounted jury verdict value.
- (c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.
- (d) Standards requiring appropriate adjuster workloads.
- (e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.
- (f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099 MISC reporting.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written coverage appeal procedure that contains, as a minimum, procedures for a participant filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the board of directors of the joint self-insurance program, avoid further damage, injury, or loss of use to a participant or third-party claimant.

(6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its participants.

(7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the board of directors and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

NEW SECTION

WAC 82-70-230 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to

transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form within one hundred twenty days of fiscal year end:

- (a) Audited annual financial statements, including signed, as provided to the financial auditors;
- (b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the audited financial statements are based;
- (c) Copies of all insurance coverage documents;
- (d) List of contracted consultants;
- (e) Details of changes in the ownership agreement; and
- (f) Details of services provided by contract to nonmember participants.

(3) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(4) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
- (b) On-site monitoring by the state risk manager;
- (c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 82-70-240 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) Any change in the terms of the ownership agreement;
- (b) Elimination or reduction of stop-loss insurance;
- (c) Acceptance of any loans or lines of credit;
- (d) Provision of services to nonparticipants;
- (e) Addition of participants of other entity types than those included in original application approved by state risk manager;
- (f) Any change in the program's investment guidelines.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

- (a) Increases in retention level;
- (b) Decrease or increase insurance limits;
- (c) Initial contract with a third-party administrator, or change in third-party administrator;
- (d) Any change to ownership agreement.

NEW SECTION

WAC 82-70-250 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program formed under this chapter shall require the claims auditor, the private third-party administrator, the actu-

ary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(a) No member of the board of directors, private business, including a third-party administrator, or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, private third-party administrator, or as an employee.

(iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(b) No consultant or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer or consultant except for salary and other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The amount and other terms of compensation of a broker of record shall be provided for in a written contract approved by the board of directors. Any such contract shall include a provision that contingent commissions or other forms of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the board of directors of the joint self-insurance program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No employee or other representative of a broker of record, insurer or private third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

NEW SECTION

WAC 82-70-260 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager shall fix state risk manager assessment

fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.64 RCW. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 48.64 RCW. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each joint self-insurance program formed under this chapter to the state of Washington, office of financial management within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager. Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.

NEW SECTION

WAC 82-70-270 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

NEW SECTION

WAC 82-70-280 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks formed under this chapter has been served with a cease and desist order under RCW 48.64.080(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapters 34.05 RCW and 10-08 WAC.

NEW SECTION

WAC 82-70-290 Standards for contracts—Competitive procurement standards for consultant contracts. Every joint self-insurance program formed under this chapter shall use a competitive process in the selection of consultants. The process shall provide an equal and open opportunity to

qualified parties and shall culminate in a selection based on pre-established criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by the state risk manager and financial auditors. The requirements of this section shall not pertain to consultants of a joint self-insurance program that is wholly owned by another self-insurance program that is operating in compliance with chapter 48.64 or 48.62 RCW if the consultant performs the same type of services for such other joint self-insurance programs.

WSR 11-06-023

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 24, 2011, 8:46 a.m., effective March 27, 2011]

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

Purpose: The rule-making order amends chapter 16-302 WAC by reconfiguring the chart of grass seed standards for certification to align the correct standard to the corresponding species and to reformat the chart in such a way to make it larger so it can be read on the internet.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-385.

Statutory Authority for Adoption: RCW 15.49.301 and 15.49.370(4).

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 11-01-162 on December 22, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 24, 2011.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 10-04-029, filed 1/26/10, effective 2/26/10)

WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:

((STRICKEN GRAPHIC))

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES		
		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/LB.	REG. SEEDS/LB.	CERT. %
BLUEGRASS														
Big	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canby	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Kentucky	(A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canada, Upland	(A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25
BROMEGRASS														
Smooth & Meadow	(C)	80	85	95	95	5	5	.05	.3 (c)	.1	.5	9 /lb.	91 /lb.	.25
Mountain & Sweet	(C)	85	85	95	95	5	5	.3	.3 (c)	.1	1.0	9 /lb.	91 /lb.	.25
DEERTONGUE	(C)	50	50	97	95	3	5	.50	.5 (c)	1.0	1.0	1%		
FESCUE														
Tall & Meadow	(C)	80	85	95	97	5	3	.03	.3(c)	.1	.5	18 /lb.	91 /lb.	.25
Blue, Hard & Sheep (m) Turf Type (o) Reclamation/Range Type (o)	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
		80	85	95	92	5	8	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	.03	.3(c)	.1	.5	9 /lb.	45 /lb.	.25
ORCHARDGRASS	(C)	80	85	85	90	15	10	.03	.3 (c)	.1	.5	27 /lb.	91/lb.	.25
			80 for penlate & latar											
RYEGRASS	(C)	85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Pennfine		80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
TIMOTHY		80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25
WHEATGRASS (n)														
Beardless	(C)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25
Bluebunch	(C)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25
Intermediate, Tall Pubescent	(C)	80	85	95	95	5	5	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25
Western, R/S, Streambank, Thickspike	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Slender Crested & Siberian	(S)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)(p)	9 /lb.	45 /lb.	.25(p)
	(C)	80	85	90	95	10	5	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25
INDIAN RICEGRASS	(S)	80 (j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25
PUCCINELLIA (n) distans	(C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25
WILD RYE (n)	(C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
BENTGRASS	(C)	85	85	98	98	2	2	.3	.4 (f) (g)	.2	.6 (h)			
REDTOP	(C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2			
Ann. CANARYGRASS GREEN (n) NEEDLEGRASS SWITCHGRASS	(C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.			-
	(C)	80	80	80	80	20	20	.1	.3 (c)	.1	.5	-	-	-
	(C)	60	60	90	90	10	10	.5	1.5	.1	.25			

((STRICKEN GRAPHIC))

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG. (i)	CERT. (a)	FNDT. SEEDS/lb.	REG. SEEDS/lb.	CERT. %	
BLUEGRASS															
Big	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Canby	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Kentucky	(A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Canada, Upland	(A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25	
BROMEGRASS															
Smooth & Meadow	(C)	80	85	95	95	5	5	.05	.3 (c)	.1	.5	9 /lb.	91 /lb.	.25	
Mountain & Sweet	(C)	85	85	95	95	5	5	.3	.3 (c)	.1	1.0	9 /lb.	91 /lb.	.25	
DEERTONGUE		(C)	50	50	97	95	3	5	.50	.5 (c)	1.0	1.0	1%		
FESCUE															
Tall & Meadow	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	18 /lb.	91 /lb.	.25	
Blue, Hard & Sheep (m)															
Turf Type (o)	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
Reclamation/Range Type (o)															
		80	85	95	92	5	8	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
ORCHARDGRASS		(C)	80	85	85	90	15	10	.03	.3 (c)	.1	.5	27 /lb.	91 /lb.	.25
				80 for penlate & latar											
RYEGRASS		(C)	85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Pennfine		80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
TIMOTHY			80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25
WHEATGRASS (n)															
Beardless	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
Bluebunch	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
Intermediate, Tall Pubescent	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
Western, R/S, Streambank, Thickspike	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
Slender Crested & Siberian	(S)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)(p)	9 /lb.	45 /lb.	.25 (p)	
	(C)	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
INDIAN RICEGRASS		(S)	80 (j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25
PUCCINELLIA (n)															
distans	(C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25	
WILD RYE (n)		(C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
BENTGRASS		(C)	85	85	98	98	2	2	.3	.4 (f)(g)	.2	.6 (h)			
REDTOP		(C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2			
Ann.															
CANARYGRASS	(C)	85	85	99	99	1	1	.1	.3	1 /lb.	3 /lb.				
GREEN (n)	(C)	80	80	80	80	20	20	.1	.3 (c)	.1	.5	-	-	-	
NEEDLEGRASS															
SWITCHGRASS	(C)	60	60	90	90	10	10	.5	1.5	.1	.25				

The following (a) - (p) are notes to the above table.

- (a) Not to exceed .25% other grass species for blue tag seed.
- (b) Grass seed must not contain more than 45/lb. for registered seed, 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.

- (c) A tolerance of 0.5% may be allowed for samples containing weedy bromus spp provided the total of all other weed seeds does not exceed 0.3%.
- (d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.
- (e) A tolerance of 0.8% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all

other crop seed does not exceed 0.1% for registered class and 0.5% for certified class.

- (f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: Plantago spp., Big Mouse-ear Chickweed, Yarrow, Spotted Cat's Ear, and Dandelion.
- (g) A maximum of .50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed .40%.
- (h) 1.50% other fine bentgrasses and .50% redtop may be allowed in certified bentgrass containing a minimum of 98.00% total bentgrass.
- (i) A crop exam is required for all registered and foundation class grass seeds.
- (j) Or 70% by Tz test.
- (k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation 0.1%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
- (l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
- (m) An ammonia test is required on hard, blue and sheep fescue to determine presence of other Fescue sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
- (n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.
- (o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types are to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.
- (p) 10% slender wheatgrass is allowed in the certified class of Critana, provided that the total of all other grass spp. does not exceed .25% and total other crop, including all other grass spp. does not exceed .50%.

WSR 11-06-032

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket U-100523, General Order R-563—Filed February 25, 2011, 12:33 p.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-07 issue of the Register.

WSR 11-06-042

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Economic Services Administration)

[Filed February 28, 2011, 2:55 p.m., effective March 31, 2011]

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

Purpose: The division of child support (DCS) is adopting new and amended sections in chapter 388-14A WAC in accordance with the budget for state fiscal year 2011, which requires the DCS to apply collections from federal tax refund offsets (1) only to child support arrears and (2) first to debt that has been assigned to the state.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-5001 What procedures does DCS follow to distribute support collections?, 388-14A-5002 How does DCS distribute support collections in a nonassistance case?, 388-14A-5003 How does DCS distribute support collections in an assistance case?, 388-14A-5004 How does DCS distribute support collections in a former assistance case?, 388-14A-5005 How does DCS distribute federal tax refund offset collections?, 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case?, and 388-14A-5010 How does the division of child support distribute federal tax refund offset collections from joint returns?

Statutory Authority for Adoption: RCW 26.23.035, 34.05.350 (1)(c).

Adopted under notice filed as WSR 10-24-100 on December 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: Not applicable.

- No small business economic impact statement was prepared because this rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.
- No cost-benefit analysis was prepared because although this rule does meet the definition of a significant legislative rule, DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: February 23, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5001 What procedures does DCS follow to distribute support collections? (1) When distributing support collections, the division of child support (DCS) records collections in exact amounts of dollars and cents.

(2) DCS distributes support collections within two days of the date DCS receives the collection, unless DCS is unable

to distribute the collection for one or more of the following reasons:

(a) ~~((The location of)) DCS is unable to locate the payee ((is unknown)) and the payee has not signed up for electronic funds transfer (EFT) of disbursements;~~

(b) DCS does not have sufficient information to identify the accounts against which or to which it should distribute the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support is owed or how DCS should distribute the collection.

(d) DCS receives prepaid child support and is holding it for distribution in future months under ~~((subsection (2)(c) of this section))~~ WAC 388-14A-5008;

(e) DCS mails a notice of intent to distribute support money ~~((to the custodial parent (CP)))~~ under WAC 388-14A-5050;

(f) DCS receives federal tax refund offset collections, which are distributed according to WAC 388-14A-5005 and 388-14A-5010.

(g) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the collection, but may delay disbursement of that amount until a future collection is received which increases the amount of the disbursement to the family to at least one dollar. If no future collections are received which increase the disbursement to the family to at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by ~~((electronic funds transfer (EFT)) or to refunds of federal tax refund offset collections));~~

~~((g))~~ (h) Other circumstances exist which make a proper and timely distribution of the collection impossible through no fault or lack of diligence of DCS.

(3) DCS distributes support collections based on the date DCS receives the collection, except as provided under WAC 388-14A-5005. DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the support collection, no matter when the money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services;

(e) Persons or entity making the payment when DCS is unable to identify the person to whom the support is payable after making reasonable efforts to obtain identification information.

(5) If DCS is unable to disburse a support collection because the location of the family or person is unknown, it

must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the collection in accordance with chapter 63.29 RCW, the uniform unclaimed property act.

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

(7) DCS changes the distribution rules based on changes in federal statutes and regulations. DCS may also change the distribution rules based on the state budget, but only to the extent allowed by federal law.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5002 How does DCS distribute support collections in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) applies support collections within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5003 How does DCS distribute support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a TANF grant.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(c) Third:

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

(d) Fourth, to satisfy support debts owed to the family;

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5004 How does DCS distribute support collections in a former assistance case? (1) A former assistance case is one where the family is not currently receiving a TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy support debts owed to the family;

(c) Third, to satisfy support debts which are conditionally or temporarily assigned to the department. These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5005 How does DCS distribute federal tax refund offset collections? The division of child support (DCS) distributes federal tax refund offset collections in accordance with 42 U.S.C. Sec. 657 and 42 U.S.C. Sec. 654 (34), as follows:

(1) ~~(First, to satisfy the current support obligation for the month in which DCS received the collection.~~

~~(2) Second,)) DCS distributes ((any amounts over current support)) federal tax refund offset collections to arrears only, and not to current support.~~

(2) DCS distributes federal tax refund offset collections within an individual case depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all ~~((remaining))~~ amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all ~~((remaining))~~ amounts are distributed first to ~~((family))~~ permanently assigned arrears, then to ~~((permanently))~~ conditionally assigned arrears, then to ~~((conditionally assigned))~~ family arrears.

(c) In a current assistance case, all ~~((remaining))~~ amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

(3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts ~~((and to current support obligations on cases with certified debts))~~. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and

RCW 74.20.040 from federal tax refund offset collections distributed to nonassistance cases.

(6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case? ~~((When the NCP has more than one Title IV-D case))~~ Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections in the following manner when the non-custodial parent (NCP) has more than one Title IV-D case:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third, within each Title IV-D case according to WAC 388-14A-5002, 388-14A-5003, or 388-14A-5004.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5010 How does the division of child support distribute federal tax refund offset collections from joint returns? (1) The division of child support (DCS) collects child support through the interception of federal tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a tax refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a collection on behalf of an NCP is from an intercepted tax refund based on a joint return, DCS may distribute fifty percent of that collection as provided in WAC 388-14A-5005 and hold the remainder for up to six months in case the NCP's spouse is entitled to a share of the federal tax refund.

(3) DCS distributes fifty percent of the collection according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the collection in suspense until the earlier of the following:

(a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or

(b) For a period not to exceed six months from notification of the offset.

(5) After DCS holds part of a collection under subsection (4) of this section, DCS distributes the remainder of the collection to the NCP's support ~~((obligations if))~~ arrears according to WAC 388-14A-5005, unless DCS is ((not)) required to

return the unobligated spouse's portion of the refund. The CP may:

(a) Request that DCS distribute the payment to the NCP's support obligation sooner upon a showing of hardship to the CP; and

(b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

WSR 11-06-052
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed March 1, 2011, 11:59 a.m., effective April 1, 2011]

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

Purpose: The purpose of this rule-making order is to adopt changes to chapter 392-172A WAC, changing the use of the term "mental retardation" to "intellectual disability." Additionally, the office of superintendent of public instruction amended rules with incorrect regulatory references, and amended the language of rules so they are consistent with the federal regulations they implement.

Citation of Existing Rules Affected by this Order: Amending WAC 392-172A-01035, 392-172A-02090, 392-172A-03055, 392-172A-03080, 392-172A-03105, 392-172A-04050, 392-172A-04090, 392-172A-04115, 392-172A-05030, 392-172A-05145, and 392-172A-05220.

Statutory Authority for Adoption: RCW 28A.155.090.

Other Authority: 20 U.S.C. 1400 (c)(12)(C); 20 U.S.C. 1401 (3)(A)(i); 20 U.S.C. 1401 (30)(C).

Adopted under notice filed as WSR 10-24-109 on December 1, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 1, 2011.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special

education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: (~~Mental retardation~~) **Intellectual disability**, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(c) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) (~~Mental retardation~~) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of ~~((mental retardation))~~ intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-02090 Personnel qualifications. (1)

In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085, all school district personnel providing special education services shall meet the following qualifications:

(a) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement of this subsection (1), all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(d) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early child-

hood special education assignment must be given first to employees having early childhood special education endorsement.

(e) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(f) Paraprofessional staff and aides shall present evidence of skills and knowledge necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate, as provided in (g) of this subsection. Paraprofessional staff in Title 1 school-wide programs shall meet ESEA standards for paraprofessionals. Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(g) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain highly qualified teachers, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC ((181-16-195)) 180-16-195.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of highly qualified.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee be highly qualified, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03055 Specific learning disability—Determination. The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if:

(1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading fluency skills.
- (f) Reading comprehension.
- (g) Mathematics calculation.

(h) Mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and

(b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.

(3) The group determines that its findings under subsection (2) of this section are not primarily the result of:

- (a) A visual, hearing, or motor disability;
- (b) (~~Mental retardation~~) Intellectual disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392-172A-03005:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or

(b) Whenever a student is referred for an evaluation.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03080 Specific documentation for the eligibility determination of students suspected of having specific learning disabilities. (1) In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

(a) Whether the student has a specific learning disability;

(b) The basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040;

(c) The relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) Any educationally relevant medical findings;

(e) Whether:

(i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and

(ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or

(B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and

(C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development.

(f) The determination of the group concerning the effects of a visual, hearing, or motor disability; (~~mental retardation~~) intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) If the student has participated in a process that assesses the student's response to scientific, research-based intervention:

(i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and

(ii) The documentation that the student's parents were notified about:

(A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the student's rate of learning; and

(C) The parents' right to request an evaluation.

(2) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03105 When IEPs must be in effect.

(1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) A meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district believes an evaluation is necessary to determine eligibility under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW ((28A.225.335)) 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.335 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04050 Due process and state complaints regarding parentally placed students in a private school. (1) Due process procedures are not available for complaints that a school district has failed to meet the requirements regarding consultation, determination of need and provision of services, including the provision of services indicated on the student's services plan.

(2) Due process procedures may be used by a parent who is alleging that a school district has failed to meet child find requirements related to the parentally placed students in private schools.

(3) Any due process request regarding the child find requirements described in subsection (2) of this section must be filed with the school district in which the private school is located and a copy must be forwarded to the OSPI in accordance with the due process procedures in WAC 392-172A-05080 through 392-172A-05125.

(4) State complaints. Any complaint that OSPI or a school district has failed to meet the requirements in WAC 392-172A-04010 through 392-172A-04015 and 392-172A-04025 through ~~(392-172A-04075)~~ 392-172A-04070 must be filed in accordance with the state complaint procedures described in WAC 392-172A-05025 through 392-172A-05040.

(5) A complaint filed by a private school official under WAC 392-172A-04030 must be filed with the OSPI in accordance with the procedures in that section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04090 Approval of nonpublic agencies. (1) A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.

(2) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(3) The OSPI shall provide the school district and the nonpublic agency with the procedures and application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(4) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and shall determine whether the application should be approved or disapproved.

(5) The OSPI shall make information regarding currently approved nonpublic agencies available to all school districts and to the public.

(6) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC ~~(392-172A-04075)~~ 392-172A-04080 through 392-172A-04095.

(7) Nonpublic agencies located in other states must first be approved by the state education agency of the state in which the educational institution is located. Documentation

of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the nonpublic agency shall meet the requirements for approval in this state under the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04115 Placement of students when FAPE is at issue. (1) If a student eligible for special education has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through ~~(392-172A-04075)~~ 392-172A-04070.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a)(i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC (~~(392-172A-05015)~~) 392-172A-05040.

(2) The school district or other agency shall respond in writing to the OSPI, and include documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(3) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(4) The OSPI shall provide the complainant a copy of the response to the complaint and provide the complainant an opportunity to reply to the response.

(5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days ~~(or)~~ after receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a local school district or other public agency is not achieved pursuant to subsection (8) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under subsection (4) of this section.

(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without

disabilities, except that services shall be provided in accordance with subsection (4) of this section.

(4) A student who is removed from the student's current placement pursuant to subsection (3) or ~~((5))~~ (7) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(c) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.

(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

(e) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.

(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.

(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was

manifestation of the student's disability, the IEP team must either:

(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(9) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05220 Hearing on a request to amend records. A hearing initiated pursuant to WAC ~~((392-172A-07185))~~ 392-172A-05215 to challenge information in

educational records shall be conducted according to procedures developed by the school district or other public agency, and in conformance with the procedures in 34 CFR 99.22 that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the school district has received the request;

(2) The parent shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the school district, who does not have a direct interest in the outcome of the hearing;

(4) The parent shall be afforded a full and fair opportunity to present evidence relevant to the amendment request and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The school district shall provide a written decision to the parent within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

WSR 11-06-060

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 09-01—Filed March 1, 2011, 4:26 p.m., effective April 1, 2011]

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

Purpose: These amendments:

- Bring the rule into compliance with United States Environmental Protection Agency (EPA) regulations including standards for excess emissions, major stationary sources located in a nonattainment area, and update the date of federal regulations adopted by reference;
- Set a new exemption level for greenhouse gas emissions and particulate matter, PM_{2.5}, below which permitting is not required;
- Create a program allowing interjurisdictional recognition of permits for portable sources;
- Keep the rule correlated with recent updates to related WAC;
- Update definitions to match current state and federal regulations;
- Clarify the permitting program for nonroad engines;
- Establish a permitting procedure for emergency engines;
- Update the rule to resolve state implementation plan deficiencies, and
- Other housekeeping corrections and changes.

Citation of Existing Rules Affected by this Order: Amending chapter 173-400 WAC, General regulations for air pollution sources.

Statutory Authority for Adoption: Chapter 70.94 RCW, Clean Air Act.

Adopted under notice filed as WSR 10-20-151 on October 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.325 (6)(b)(ii) requires ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 6, 2010, and the adopted rule filed on March 1, 2011. Ecology made these changes for all of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

This narrative describes the changes and ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this section.

Chapter 173-400 WAC was updated to incorporate changes to PSD increments. This was published as a final rule in 40 C.F.R. 52.21 of the Federal Register on October 20, 2010, after Washington's proposed rule was published. During the stakeholder process, ecology clearly announced our intention to make these updates before adopting a final rule. Reference dates throughout the rule were updated to capture these updates.

- WAC 173-400-030 Definitions. The provision to except tertiary-butyl acetate from this list of volatile organic compounds was amended to match the federal definition of VOC: "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."

The change complies with EPA regulations and was requested in a public comment.

- WAC 173-400-036 Relocation of portable sources. The provision was changed to accommodate a stakeholder request for clarification that nonroad engines subject to regulation under WAC 173-400-035 are not subject to regulation as portable sources. EPA requested that relocated stationary sources be limited to some specific time period. In keeping with the existing provisions of WAC 173-400-035 Portable and temporary sources, the duration was set for a maximum of one year.
- WAC 173-400-075, when the list of specific area sources of hazardous air pollutants was updated, three sources were inadvertently left off the listing. EPA noted their absence and requested that we add these sources to comply with federal regulations:
 - o M M M M M, Carbon black production
 - o N N N N N N, Chromium compounds
 - o V V V V V V, Chemical manufacturing for synthetic minors.

- WAC 173-400-105(8), the CR-102 contained new requirements for continuous emission monitoring systems. The criteria for measuring opacity had inadvertently been omitted. These criteria are added in WAC 173-400-105(8) as are the criteria for measuring emissions other than opacity.
- WAC 173-400-108, in response to comments about a facility's need to respond to an excess emissions episode with an urgency that may leave little time for procedural actions, the requirement for reporting the excess emissions has been revised. The final rule requires that 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.
- WAC 173-400-109, in response to a comment from the EPA, explanatory text was added to the rule to clarify that in a federal enforcement case concerning excess emissions, the court will consider the initial decision made by the permitting authority, but is not bound by that decision.
- WAC 173-400-110, subsection (2) notes the approval criteria for new source review. In response to a comment, the regulatory language was simplified and brought into compliance with federal regulations.
- WAC 173-400-110(5), in response to a comment, new regulatory language was added that makes it clear that an applicant can request emission limits on greenhouse gases.
- WAC 173-400-111, the EPA requested that the rule state the minimum information that must be provided in a new source review application. This information was inserted into the rule.
- WAC 173-400-116, regulates increment protection. This section has no effect until it is adopted into the state implementation plan by the EPA. The amended language clarifies this applicability criteria and states that ecology is obligated to periodically review the increment consumption.
- WAC 173-400-131, the proposed language in the CR-102 stated that the emission reduction credit must be less than the actual reduction, but there were no criteria stating the minimum difference. Rule language has been added to clearly state the minimum difference between the reduction and the credit.
- WAC 173-400-720, subsection (4) lists the permit requirements for approval of a PSD permit. Rule language has been added to reference the federal new source performance standards, the national emission standards and the state emission standards that must be complied with.
- WAC 173-400-720, subsection (4)(b) lists the exceptions to 40 C.F.R. 52.21 which is adopted by reference. New rule language was added to subsection (4)(b)(iii) (D) that clarifies when fugitive emission must be monitored.
- WAC 173-400-730 (2)(d), the new rule language recognizes that one set of procedures is effective before the WAC 173-400-700 series is adopted into the SIP and another set of procedures is effective after the series has been adopted into the SIP.
- WAC 173-400-820(5), when the rule language was proposed, subsection (5), Reasonable possibility, contained subsection (f) that set out specific criteria for determining what constitutes a "reasonable possibility." This section has been deleted in response to a comment.
- WAC 173-400-840, emission offset requirements are detailed in WAC 173-400-800. At the request of the EPA, a new paragraph was added. The new subsection (8) references an EPA policy on the control of volatile organic compounds.
- WAC 173-400-930, emergency engine provisions are detailed in WAC 173-400-930. In response to a comment, the list of activities that qualify as maintenance and testing has been expanded to include operation of an engine to meet the warranty and maintenance procedures established by the engine manufacturer.

A final cost-benefit analysis is available by contacting Linda Whitcher, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6875, fax (360) 407-7534, e-mail Linda.Whitcher@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 29, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 10, Amended 20, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 1, 2011.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-030 Definitions. Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

(1) "**Actual emissions**" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and

types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) "**Adverse impact on visibility**" is defined in WAC 173-400-117.

(3) "**Air contaminant**" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) "**Air pollution**" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) "**Allowable emissions**" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to ~~((federally))~~ enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as ~~((a-federally))~~ an enforceable approval condition, including those with a future compliance date.

(6) "**Ambient air**" means the surrounding outside air.

(7) "**Ambient air quality standard**" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) "**Approval order**" is defined in "**order of approval.**"

(9) "**Attainment area**" means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(10) "**Authority**" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(11) "**Begin actual construction**" means, in general, initiation of physical on-site construction activities on an emission unit ~~((which))~~ that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) "**Best available control technology (BACT)**" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(13) "**Best available retrofit technology (BART)**" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(14) "**Brake horsepower (BHP)**" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(15) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

~~((15))~~ (16) "**Capacity factor**" means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

~~((16))~~ (17) "**Class I area**" means any area designated under section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

~~((17))~~ (18) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

~~((18))~~ (19)(a) **"Commence"** as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be ~~((cancelled))~~ canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

~~((19))~~ (20) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

~~((20))~~ (21) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((21))~~ (22) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

~~((22))~~ (23) **"Dispersion technique"** means a method ~~((which))~~ that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

~~((23))~~ (24) **"Ecology"** means the Washington state department of ecology.

~~((24))~~ (25) **"Emission"** means a release of air contaminants into the ambient air.

~~((25))~~ (26) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

~~((26))~~ (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.

~~((27))~~ (28) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year ((tpy))
Nitrogen oxides:	40 ((tpy)) <u>tons per year</u>

Air Contaminant	Annual Emission Rate
Sulfur dioxide:	40 ((tpy)) <u>tons per year</u>
Particulate matter (PM):	25 ((tpy)) <u>tons per year</u> of PM emissions
	15 ((tpy)) <u>tons per year</u> of PM-10 emissions <u>10</u> <u>tons per year of PM-2.5</u>
Volatile organic compounds:	40 ((tpy)) <u>tons per year</u>
Fluorides:	3 ((tpy)) <u>tons per year</u>
Lead:	0.6 ((tpy)) <u>tons per year</u>
Sulfuric acid mist:	7 ((tpy)) <u>tons per year</u>
Hydrogen sulfide (H ₂ S):	10 ((tpy)) <u>tons per year</u>
Total reduced sulfur (including H ₂ S):	10 ((tpy)) <u>tons per year</u>
Reduced sulfur compounds (including H ₂ S):	10 ((tpy)) <u>tons per year</u>

~~((28))~~ (29) **"Emissions unit" or "emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

~~((29))~~ (30) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

~~((30))~~ (31) **"Excess stack height"** means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

~~((31))~~ (32) **"Existing stationary facility (Facility)"** is defined in WAC 173-400-151.

~~((32))~~ (33) **"Federal Clean Air Act (FCAA)"** means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

~~((33))~~ (34) **"Federal Class I area"** means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

~~((34))~~ (35) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States. ~~((This includes, but is not limited to, the U.S. Department of the Interior—National Park Service, the U.S. Department of the Interior—U.S. Fish and Wildlife Service, the U.S. Department of Agriculture—Forest Service, and/or the U.S. Department of the Interior—Bureau of Land Management.~~

~~((35))~~ (36) **"Federally enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61,

62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 CFR 52.21 or under a SIP approved new source review regulation, and emissions limitation orders issued under WAC 173-400-091.

~~((36))~~ (37) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((37))~~ (38) **"Fugitive dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((38))~~ (39) **"Fugitive emissions"** means emissions ~~((which))~~ that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((39))~~ (40) **"General process unit"** means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((40))~~ (41) **"Good engineering practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

~~((41))~~ (42) **"Greenhouse gases (GHGs)"** includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(43) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

~~((42))~~ (44) **"In operation"** means engaged in activity related to the primary design function of the source.

~~((43)~~ **"Lowest achievable emission rate (LAER)"** means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

~~In no event shall the application of this term allow a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards.~~

~~((44))~~ (45) **"Mandatory Class I federal area"** means any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness;

~~((45))~~ (46) **"Masking"** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((46))~~ (47) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

~~((47))~~ (48) **"Modification"** means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((48))~~ (49) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((49))~~ (50) **"National Emission Standards for Hazardous Air Pollutants (NESHAPS)"** means the federal rules in 40 CFR Part 61.

~~((50))~~ (51) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63.

~~((51))~~ (52) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((52))~~ (53) **"New source"** means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the Federal Clean Air Act.

~~((53))~~ (54) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 CFR Part 60.

~~((54))~~ (55) **"Nonattainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((55))~~ (56) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

~~((56))~~ (57) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

~~((57))~~ (58) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((58))~~ (59) **"Outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners or silo burners is not considered outdoor burning.

~~((59))~~ (60) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

~~((60))~~ (61) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

~~((61))~~ (62) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((62))~~ (63) **"Particulate matter"** or **"particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((63))~~ (64) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

~~((64))~~ (65) **"Parts per million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((65))~~ (66) **"Permitting authority"** means ecology or the local air pollution control authority with jurisdiction over the source.

~~((66))~~ (67) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((67))~~ (68) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((68))~~ (69) **"PM-10 emissions"** means finely divided solid or liquid material, including ~~((condensable))~~ condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

~~((69))~~ (70) **"PM-2.5"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(71) "PM-2.5 emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51 or by a test method specified in the SIP.

(72) "Portable source" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(73) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is ~~((federally))~~ enforceable. Secondary emissions do not count in determining the potential to emit of a source.

~~((70))~~ (74) **"Prevention of significant deterioration (PSD)"** means the program in WAC 173-400-700 to 173-400-750.

~~((71))~~ (75) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((72))~~ (76) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

~~((73))~~ (77) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the

application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

~~((74))~~ ~~"Regulatory order" means an order issued by ecology or permitting authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.~~

~~((75))~~ (78) "Regulatory order" means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter 70.94 RCW or rules adopted there under; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

(79) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

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

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~((76))~~ (80) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

~~((77))~~ (81) "Source category" means all sources of the same type or classification.

~~((78))~~ (82) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((79))~~ (83) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((80))~~ (84) "Standard conditions" means a temperature of 20°C ((68° F)) (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

~~((81))~~ (85) "State implementation plan (SIP)" or "Washington SIP" means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance

schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

~~((82))~~ (86) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

~~((83))~~ (87) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

~~((84))~~ (88) "Synthetic minor" means any source whose potential to emit has been limited below applicable thresholds by means of ((a federally)) an enforceable order, rule, or approval condition.

~~((85))~~ "Temporary source" is a source of emissions (such as a nonroad engine) which is operated at a particular site for a limited period of time. A temporary source may or may not be a stationary source or a source as defined in subsections (76) and (82) of this section, respectively.

~~((86))~~ (89) "Total reduced sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an EPA approved equivalent method and expressed as hydrogen sulfide.

~~((87))~~ (90) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((88))~~ (91) "Toxic air pollutant (TAP)" or "toxic air contaminant" means any ((Class A or B)) toxic air pollutant listed in WAC 173-460-150 ((and 173-460-160)). The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 ((and/or 173-460-160)). The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((89))~~ (92) "Unclassifiable area" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

~~((90))~~ (93) "United States Environmental Protection Agency (USEPA)" shall be referred to as EPA.

~~((91))~~ (94) "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

~~((92))~~ (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-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)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF₃)₂CFCF₂OC₂H₅); 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; 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 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by 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 or the authority, 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.

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-035 ((Portable and temporary sources-)) Nonroad engines. ~~((1) For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards. A temporary or portable source that is considered a major stationary source within the meaning of WAC 173-400-113 must also comply with the requirements in WAC 173-400-141.~~

~~(2) This section applies statewide except where an authority has its own rule regulating such sources.~~

~~(3) Fees relating to this section can be found in chapter 173-455 WAC.)~~ **(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.

(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.

(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 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.

(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 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. 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).

(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) 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).

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

(f) 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.

(g) 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.

(h) 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.

(i) 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).

NEW SECTION

WAC 173-400-036 Relocation of portable sources.

(1) Applicability.

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted these rules. The owner or operator of a portable source may file a new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(d) Engines subject to WAC 173-400-035 Nonroad engines are not portable sources subject to this section.

(2) Portable sources in nonattainment areas. If a portable source is locating in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval.

(3) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice on a form provided by the permitting authority and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(d) Operation at any location under this provision is limited to one year or less. Operations lasting more than one year must obtain a site specific order of approval.

(4) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

(5) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

(6) **Portable source modification.** Prior to beginning actual construction or installation of a modification of a portable source, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-040 General standards for maximum emissions. (1) 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 ~~((will))~~ takes ~~((precedent))~~ precedence over a general emission standard listed in this chapter. 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.

~~((Further,))~~ 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, ~~((ecology or))~~ the permitting authority shall, as provided in RCW ~~((70.194.154 [RCW 70.94.154]))~~ 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:

(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 ~~((ecology or))~~ the permitting authority must be advised of the schedule.

(b) 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.

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) 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 CFR 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.

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

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

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting 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 conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) 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.

~~((2))~~ **(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.

~~((3))~~ **(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.

~~((4))~~ **(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 property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

~~((5))~~ **(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.

~~((6))~~ **(7) Sulfur dioxide.**

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, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ~~((ecology or))~~ the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ~~((ecology or))~~ the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ~~((ecology or))~~ the permitting authority.

~~((7))~~ **(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.

~~((8))~~ **(9) Fugitive dust.**

(a) The owner or operator of a source ~~((of))~~ or activity that generates fugitive dust ~~((shall))~~ must take reasonable

precautions to prevent that fugitive dust from becoming airborne and ~~((shall))~~ must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source ~~((of))~~ or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area ~~((shall be))~~ is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113 ~~((2)(e))~~ (4).

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) 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 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 EPA method 5 in Appendix A to 40 CFR Part 60, (in effect on July 1, ~~((2004))~~ 2010) or approved procedures contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of ~~((July 12, 1990))~~ September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of ~~((July 12, 1990))~~ September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority ~~((or ecology))~~ prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements adopted by reference in WAC 173-400-075 (40 CFR 63 subpart EEE) and WAC 173-400-115 (40 CFR 60 subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of ~~((July 12, 1990))~~ September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when ~~((ecology or))~~ the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NES-HAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. ~~((See WAC 173-400-115(2) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.))~~

(a) Definitions.

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

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

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

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

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

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

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

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

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

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on ~~((January 30, 2001))~~ July 1, 2010) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

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

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

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR

60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

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

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

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

(A) Units are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, ~~((2000))~~ 2010); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA ~~((adopted on December 6, 2000 and in effect on June 1, 2001))~~ in effect on July 1, 2010; or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, ~~((2000))~~ 2010), Eb (in effect on July 1, ~~((2000))~~ 2010), and AAAA ~~((adopted on December 6, 2000 and in effect on June 1, 2001))~~ in effect on July 1, 2010, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

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

(iv) *Medical waste incineration units.* Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, ~~((2000))~~ 2010);

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

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

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

(C) You notify the permitting authority that the unit meets all of these criteria.

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

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

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

(C) You notify the permitting authority that the unit meets all of these criteria.

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

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

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, ~~(2000)~~ 2010).

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

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on ~~((January 30, 2004))~~ July 1, 2010).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

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

(x) *Cyclonic barrel burners.* See 40 CFR 60.2265 (in effect on ~~((January 30, 2004))~~ July 1, 2010).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on ~~((January 30, 2004))~~ July 1, 2010).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, ~~((2000))~~ 2010).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, ~~((2000))~~ 2010).

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

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

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

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

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

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

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

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

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

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on ~~((January 30, 2004))~~ July 1, 2010).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on ~~((January 30, 2004))~~ July 1, 2010) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115~~((2))~~, which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on ~~((January 30, 2004))~~ July 1, 2010, which is adopted by reference. The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;

- Waste management plan requirements in 60.2620 through 60.2630;

- Operator training and qualification requirements in 60.2635 through 60.2665;

- Emission limitations and operating limits in 60.2670 through 60.2685;

- Performance testing requirements in 60.2690 through 60.2725;

- Initial compliance requirements in 60.2700 through 60.2725;

- Continuous compliance requirements in 60.2710 through 60.2725;

- Monitoring requirements in 60.2730 through 60.2735;

- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;

- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

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

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

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

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

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

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

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

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

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. ~~((See WAC 173-400-115(2) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.))~~

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

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

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in ~~((this subsection (5)(c)(viii) and (ix) ((of this subsection)).~~

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in ~~((this subsection (5)(c)(x) ((of this subsection)).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

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

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

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

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

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

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on ((February 5, 2004)) July 1, 2010).

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

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

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

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

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

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

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

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on ((February 5, 2004)) July 1, 2010) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on ((February 5, 2004)) July 1, 2010).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((February 5, 2004)) July 1, 2010).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((February 5, 2004)) July 1, 2010), mean the unit is considered a new unit and subject to WAC 173-400-115((2)), which adopts 40 CFR Part 60, subpart AAAA (in effect on ((June 6, 2004)) July 1, 2010).

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

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((February 5, 2004)) July 1, 2010) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((February 5, 2004)) July 1, 2010) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on ((February 5, 2004)) July 1, 2010).

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

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

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((February 5, 2004)) July 1, 2010) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((February 5, 2004)) July 1, 2010) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on ((February 5, 2004)) July 1, 2010), which is adopted by reference.

(i) The rule contains these major components:

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

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

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

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

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

- (I) Recordkeeping reporting in 60.1830 through 60.1855;
- (J) Reporting in 60.1860 through 60.1905;
- (K) Equations in 60.1935;
- (L) Tables 2 through 8.
- (ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:
 - (A) "State plan" in the federal rule means WAC 173-400-050(5).
 - (B) "You" in the federal rule means the owner or operator.

- (C) "Administrator" includes the permitting authority.
- (D) ~~((Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule.~~
- ~~(E))~~ "The effective date of the state plan approval" in the federal rule means December 6, 2002.
- (h) Compliance schedule.
- (i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.
- (ii) Small municipal waste combustion units must ~~((comply with Table 1))~~ achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

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

- (iii) Class I units must comply with these additional requirements:
 - (A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on ~~((February 5, 2004))~~ July 1, 2010).
 - (B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:
 - (I) December 6, 2003; or
 - (II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.
 - (i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

- 400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) as applicable.
- (b) All wigwam and silo burners ~~((shall))~~ 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) ~~((Ecology))~~ The permit authority may establish additional requirements for wigwam ~~((burners located in sensitive areas as defined by chapter 173-440 WAC))~~ and silo burners. These requirements may include but shall not be limited to:
 - (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.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

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.**
 - (a) All wigwam and silo burners ~~((shall))~~ designed to dispose of wood waste must meet all provisions of WAC 173-400-040 ~~((+))~~ (3), (4), (5), (6), (7), (8), and WAC 173-

- (2) **Hog fuel boilers.**
 - (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.

(3) Orchard heating.

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

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

(4) 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 grams/dscf) of exhaust gas.

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

(6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all applicable provisions of those sections.

(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) Sewage sludge incinerators. Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, ~~((2004))~~ 2010, are adopted by reference.

(9) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991. A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a

lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115~~((2))~~) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

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

(c) Standards for MSW landfill emissions.

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

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

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

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

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

(e) Test methods and procedures.

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

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

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

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

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

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

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

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The

landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

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

(h) Gas collection and control systems.

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

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

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

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

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

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

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

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 CFR Part 61 and Appendices in effect on (~~October 1, 2006, is~~) July 1, 2010, are adopted by reference. The term "administrator" in 40 CFR Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Parts 61, 62, 63 and(~~to~~) 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 61, 62, 63 and(~~to~~) 65.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) (~~Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Parts 61 or 63, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.~~)

~~(6) Maximum achievable control technology (MACT) standards. MACT standards are officially known as))~~ Submit reports required by 40 CFR Parts 61 and 63 to the permitting authority, unless otherwise instructed.

~~(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.~~

~~((to))~~ Adopt by reference.

~~(a) 40 CFR Part 63 and Appendices in effect on ((October 1, 2006, is)) July 1, 2010, as they apply to major stationary sources of hazardous air pollutants are adopted by reference, except for Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities, as it applies to nonmajor sources. ((Exceptions are listed in (6)(b) of this section.~~

~~The following list of subparts to 40 CFR 63 which are shown as blank or reserved as of the date listed above, is provided for informational purposes only: Subparts K, P, V, Z, FF, NN, ZZ, AAA, BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, LLLL, and OOOO.~~

~~(b) Exceptions to adopting 40 CFR Part 63 by reference:~~

~~(i) The term "administrator" in 40 CFR Part 63 includes the permitting authority.~~

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

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

~~(B) Subpart E: Approval of State Programs and Delegation of Federal Authorities.~~

~~(C) Subpart M: National Perchloroethylene Emission Standards for Dry Cleaning Facilities as it applies to nonmajor sources.)) The term "administrator" in 40 CFR Part 63 includes the permitting authority.~~

~~(b) 40 CFR Part 63 and Appendices in effect on July 1, 2010, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:~~

~~(i) Subpart EEEEE, Primary Copper Smelting;~~

~~(ii) Subpart FFFFF, Secondary Copper Smelting;~~

~~(iii) Subpart GGGGG, Primary Nonferrous Metal;~~

~~(iv) Subpart SSSSS, Pressed and Blown Glass Manufacturing;~~

~~(v) Subpart YYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);~~

~~(vi) Subpart EEE, Hazardous Waste Incineration;~~

~~(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;~~

~~(viii) Subpart LLL, Portland Cement;~~

~~(ix) Subpart X, Secondary Lead Smelting;~~

~~(x) MMMMM, Carbon black production;~~

~~(xi) NNNNNN, Chromium compounds; and~~

~~(xii) VVVVV, Chemical manufacturing for synthetic minors.~~

~~(7) Consolidated requirements for the synthetic organic chemical manufacturing industry. 40 CFR Part 65, in effect on ((October 1, 2006)) July 1, 2010, is adopted by reference.~~

~~(8) Emission standards for perchloroethylene dry cleaners.~~

~~(a) Applicability.~~

~~(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). ((Table 1 divides dry cleaning facilities into 3 regulatory source categories by the type of equipment they use and the volume of PCE purchased.)) Each dry cleaning system must follow the applicable requirements in Table 1:~~

TABLE 1 ((-)) PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
((+)) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
((2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr))

~~(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, ((2001)) 2010).~~

~~((+)) (iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.~~

~~(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.~~

~~(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.~~

~~(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.~~

~~(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:~~

~~(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.~~

~~(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.~~

~~(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.~~

~~(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.~~

~~(c) Operations and maintenance record.~~

~~(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.~~

~~(ii) The information in the operations and maintenance record must be kept on-site for five years.~~

~~(iii) The operations and maintenance record must contain the following information:~~

~~(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.~~

~~(B) Repair: The date, time, and result of each repair of the dry cleaning system.~~

~~(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:~~

~~(I) The air temperature at the inlet of the refrigerated condenser;~~

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

~~((e))~~ **(d) General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

~~((e))~~ **(e) Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3 and Table 4:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4. Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

~~(ii) ((An inspection must include an examination of) You must check for leaks using a portable leak detector.~~

(A) The leak detector must be able to detect concentrations of perchloroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(ii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

~~((iii))~~ (iv) The dry cleaning system must be inspected while it is operating.

~~((iv))~~ (v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

~~((e))~~ **(f) Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

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

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

~~((f))~~ **(g) Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-081 Startup and shutdown. (1) In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) ~~((ecology and))~~ the permitting authorities ~~((shall))~~ will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

(2) Where ~~((ecology or))~~ the permitting authority determines 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 standard during startup or shutdown, ~~((ecology or))~~ the permitting authority ~~((shall))~~ must include in the standard 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, ~~((ecology and))~~ the permitting authorities shall take into account any incremental increase in allow-

able 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 ~~((an approved))~~ Washington's state implementation plan shall not take effect until approved by EPA as a SIP amendment.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-091 Voluntary limits on emissions. (1) Upon request by the owner or operator of a new or existing source or stationary source, ~~((ecology or))~~ the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the ~~((source's))~~ potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and ~~((ecology or))~~ the permitting authority with jurisdiction ~~((over the source))~~.

(2) A condition contained in an order issued under this section shall be less than the source's or stationary source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70.94 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or stationary source complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(4) Any order issued under this section ~~((shall be subject to the notice and comment procedures under))~~ must comply with WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section ~~((shall be federally))~~ are enforceable ~~((; upon approval of this section as an element of the Washington state implementation plan))~~. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-099 Registration program. (1) Program purpose.

(a) The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(b) Permit program sources, as defined in RCW 70.94.-030~~((+7))~~ (18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

(2) Program components. The components of the registration program consist of:

(a) Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter 70.94 RCW.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

(e) Staff review, including engineering analysis for accuracy and currentness of information provided by source owners pursuant to registration program requirements.

(f) Clerical and other office support in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

WAC 173-400-101 Registration issuance. (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required shall register the source emission unit with ~~((ecology or))~~ the permitting authority. The owner or operator shall make reports containing information as may be required by ~~((ecology or))~~ the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Registration information shall be provided on forms supplied by ~~((ecology or))~~ the permitting authority and shall be completed and returned within the time specified on the form. Emission units within the facility shall be listed separately unless ~~((ecology or))~~ the permitting authority determines that certain emission units may be combined into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative shall sign the registration form for each source. The owner or operator of the source shall be responsible for notifying ~~((ecology or))~~ the permitting authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction shall maintain an operation and maintenance plan for process and

control equipment. The plan shall reflect good industrial practice and shall include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan shall be reviewed and updated by the source owner or operator at least annually. A copy of the plan shall be made available to ecology upon request.

(5) Report of closure. A report of closure shall be filed with ~~((ecology or))~~ the permitting authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator shall report to ~~((ecology or))~~ the permitting authority within ninety days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW 70.94.030~~((+7))~~(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-102 Scope of registration and reporting requirements. (1) **Administrative options.** A source in a listed source category that is located in a county without an active local authority will be addressed in one of several ways:

(a) The source will be required to register and report once each year. The criteria for identifying these sources are listed in subsection (2) of this section.

(b) The source will be required to register and report once every three years. The criteria for identifying these sources are listed in subsection (3) of this section.

(c) The source will be exempted from registration program requirements. The criteria for identifying these sources are listed in subsection (4) of this section.

(2) **Sources requiring annual registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once each year:

(a) The source emits one or more air pollutants at rates greater than the "emission threshold" rates defined in WAC 173-400-030;

(b) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(c) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(d) The director of ecology determines that the source poses a potential threat to human health and the environment.

(3) **Sources requiring periodic registration and inspections.** An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once every three years:

(a) The source emits one or more air pollutants at rates greater than the emission rates listed in subsection (5) of this

section and all air pollutants at rates less than the "emission threshold" rates defined in WAC 173-400-030; or

(b) ~~((The source emits measurable))~~ More than de minimis amounts of one or more ~~((Class A or Class B))~~ toxic air pollutants listed in WAC 173-460-150 ~~((and 173-460-160)).~~

(4) **Sources exempt from registration program requirements.** Any source included in a listed source category that is located in a county without an active local air authority ~~((shall))~~ is not ~~((be))~~ required to register if ~~((ecology determines the following))~~:

(a) The source emits pollutants below emission rates specified in subsection (5) of this section; and

(b) The source or emission unit does not emit ~~((measurable))~~ more than de minimis amounts of ~~((Class A or Class B))~~ toxic air pollutants specified in WAC 173-460-150 ~~((and 173-460-160)).~~

(5) **Criteria for defining exempt sources.** The following emission rates will be used to identify listed sources that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide	5.0
((Nitrogen oxides)) <u>Lead</u>	((2.0)) <u>0.005</u>
((Sulfur dioxide)) <u>Nitrogen oxides</u>	2.0
((Particulate Matter (PM))) <u>PM-10</u>	((1.25)) <u>0.75</u>
<u>PM-2.5</u>	<u>0.5</u>
((Fine Particulate (PM10))) <u>Total suspended particulates</u>	((0.75)) <u>1.25</u>
((Volatile organic compounds (VOC))) <u>Sulfur dioxide</u>	2.0
((Lead)) <u>Volatile organic compounds</u>	((0.005))
<u>VOC</u>	<u>2.0</u>

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-104 Registration fees. ~~((Fees can be found in chapter 173-455 WAC.))~~ See chapter 173-455 WAC for ecology's registration fee schedule.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead,

VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 CFR Parts 51, 60, 61 and 63 (in effect on ~~(October 1, 2006)~~ July 1, 2010) or procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of ~~(July 12, 1990)~~ September 20, 2004, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as oth-

erwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (in effect on July 1, ~~(2004)~~ 2010).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any ~~(equipment subject to: Continuous emissions monitoring requirement imposed by)~~ emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement ((under)) contained in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

~~((h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of the permitting authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.))~~

(6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the

authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(7) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(8) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 CFR Parts 60, 61, 62, 63, or 75, or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on July 1, 2010, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval or permit. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(d) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (a) of this section, all continuous monitoring systems shall be in continuous operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and

analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(9) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-107 Excess emissions. 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.

NEW SECTION

WAC 173-400-108 Excess emissions reporting. 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. 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) For those sources not required to report under WAC 173-401-615, the 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, 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.

(3) For any excess emission event that the owner or operator claims to be unavoidable under WAC 173-400-109, the report must 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;

(c) All additional information required under WAC 173-400-109 (3), (4) or (5) supporting the claim that the excess emissions were unavoidable.

NEW SECTION

WAC 173-400-109 Unavoidable excess emissions.

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 determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, regulation, permit, or regulatory order. 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), (4) and (5) of this section.

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

(c) This section does not apply to exceedances of emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal standards.

(d) This section does not apply to 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

(f) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under subsection (5) 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) Excess emissions due to upsets or equipment malfunctions will be considered unavoidable provided the source reports as required by WAC 173-400-108 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;

(c) 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, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and

(d) 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.

(e) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible.

AMENDATORY SECTION (Amending Order 05-19, filed 5/20/09, effective 6/20/09)

WAC 173-400-110 New source review (NSR) for sources and portable sources. ((In lieu of filing a notice of

construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.))

(1) Applicability.

(a) This section, WAC ~~173-400-111~~, 173-400-112, and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to new sources and stationary sources as defined in RCW 70.94.030(~~((22), but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.~~)).

(2) ~~Projects subject to NSR—notice of construction application.~~

(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by the permitting authority prior to beginning actual construction of any new source, except for the following:

(i) Those sources exempt under subsection (4) or (5) of this section; and

(ii) A source regulated under WAC ~~173-400-035~~), and WAC 173-400-030, but does not include nonroad engines.

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes (~~any~~);

~~(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030(, and any new or modified toxic air pollutant source, as defined in WAC 173-460-020.~~

~~(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting authority prior to beginning actual construction of any of the following new sources:~~

~~(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except subpart AAA, Wood stoves and except subpart III (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines) and subpart JJJJ (Standards of Performance for Stationary Spark Ignition Internal Combustion Engines) as they apply to emergency stationary internal combustion engines with a maximum engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);~~

~~(ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) (in effect on July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;~~

~~(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories) except subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) as it applies to emergency or limited-use stationary reciprocating internal combustion engines with a maximum~~

engine power less than or equal to 500 brake horsepower (federal rules in effect on April 30, 2008);

(iv) Any project that qualifies as a new major stationary source, or a major modification to a major stationary source subject to the requirements of WAC 173-400-112;

(v) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

(e) An applicant filing a notice of construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, must send a copy of the application to the responsible federal land manager.);

(B) The construction, modification, or relocation of a portable source as defined in WAC 173-400-030, except those relocating in compliance with WAC 173-400-036; and

(C) The establishment of a new or modified toxic air pollutant source, as defined in WAC 173-460-020.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for new sources that are not major stationary sources shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

(2) Approval requirements.

(a) A notice of construction application must be filed and an order of approval must be issued by the permitting authority prior to the establishment of any new source except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(b) If the proposed project is a new major stationary source or a major modification, located in a designated non-attainment area, and if the project emits the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and the project meets the applicability criteria in WAC 173-400-820, then the project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860.

(c) If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, then the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(d) If the proposed project will increase emissions of toxic air pollutants regulated under chapter 173-460 WAC, then the project must meet all applicable requirements of that program.

(3) Modifications.

~~New source review ((of a modification is limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-720, as applicable)) is required for any modification to a stationary source that requires an increase in a plant-wide cap or requires an increase in an emission unit or activity specific emission limit.~~

(4) Emission unit and activity exemptions.

~~((Except as provided in subsection (2) of this section,))~~
The construction or modification of emission units or an activity in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit or an activity exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

~~(iv) Paving application and maintenance((excluding asphalt plants)).~~ This provision does not exempt asphalt plants from this chapter;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, ~~((routine))~~ house keeping, ~~((routine))~~ plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application and maintenance;

(viii) Insulation application and maintenance~~((excluding products for resale))~~;

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that do not result in new or modified stationary sources or portable stationary sources.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

~~(i) Lubricating oil storage tanks ((except those facilities that are wholesale or retail)).~~ This provision does not exempt wholesale distributors of lubricating oils from this chapter;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 ~~((eff))~~ cubic feet);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure,

not for use with materials containing toxic air pollutants, as ~~((defined))~~ listed in chapter 173-460 WAC, max. VP 550 mm ~~((Hg @))~~ mercury at 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) ~~((A project))~~ New or modified emission units with combined aggregate heat inputs ~~((€f))~~ to combustion units (excluding emergency engines exempted by subsection (4)(h)(xxxix) of this section), ~~((≤))~~ less than or equal to all of the following, as applicable:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other solid fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr using used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr using wood waste or paper;

(iv) ≤ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ≤ 0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm ~~((Hg @))~~ mercury at 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers ~~((not using toxic air pollutant gases, as regulated under))~~ using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or modification of a single laboratory fume hood;

(iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

(v) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from ~~((continuous))~~ emission monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and stacks for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

(xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(xxii) Fire suppression equipment;

(xxiii) Recovery boiler blow-down tank;

(xxiv) Screw press vents;

(xxv) Drop hammers or hydraulic presses for forging or metal working;

(xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

- (xxvii) Kraft lime mud storage tanks and process vessels;
- (xxviii) Lime grits washers, filters and handling;
- (xxix) Lime mud filtrate tanks;
- (xxx) Lime mud water;
- (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) ~~(Nontoxic air pollutant, as defined in chapter 173-460 WAC.)~~ Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm (~~(Hg @)~~) mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;

(xxxiv) Surface coating, aqueous solution or suspension containing ≤ 1% (by weight) VOCs, ~~((and/or))~~ or ≤ 1% (by weight) toxic air pollutants as ((defined)) listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight) ~~((;))~~ or ≤ 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances(~~,-acid solutions~~) are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) ~~((and/or))~~ or ≤ 1% (by weight) toxic air pollutants as ((defined)) listed in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency ~~((generators powered by))~~ internal combustion engines with ~~((a maximum power of))~~ an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities ~~((GDFs) regulated by chapter 173-491 WAC))~~ with annual gasoline throughputs less than those specified in WAC 173-491-040 (4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) Exemptions based on emissions.

(a) Except as provided ~~((in subsection (2) of this section and))~~ in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in ~~((the table contained in (d) of this subsection))~~ Table 110(5) Exemption levels is exempt from new source review ~~((provided that the conditions of (b) of this subsection are met)).~~

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in ~~((the table contained in (d)))~~ Table 110(5) Exemption levels of this subsection is exempt from new source review ~~((provided that the conditions of (b) of this subsection are met)).~~

(b) ~~((The owner or operator seeking to exempt a project from new source review under this section must notify, and~~

~~upon request, file a brief project summary with the permitting authority prior to beginning actual construction on the project. If the permitting authority determines that the project will have more than a de minimis impact on air quality, the permitting authority may require the filing of a notice of construction application. The permitting authority may require the owner or operator to demonstrate that the emissions increase from the new or modified emission unit is smaller than all of the levels listed below.~~

~~(e) The owner/operator may begin actual construction on the project thirty one days after the permitting authority receives the summary, unless the permitting authority notifies the owner/operator within thirty days that the proposed new source requires a notice of construction application.~~

~~((d))~~ Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.

Table 110(5) Exemption levels ((table)):

<u>POLLUTANT</u>	<u>LEVEL (TONS PER YEAR)</u>
((a)) Total Suspended Particulates	1.25
(b) PM-10	0.75
(c) PM-2.5	0.5
(d) Sulfur Oxides	2.0
(e) Nitrogen Oxides	2.0
(f) Volatile Organic Compounds, total	2.0
(g) Carbon Monoxide	5.0
(h) Lead	0.005))
<u>Carbon monoxide</u>	<u>5.0</u>
<u>Lead</u>	<u>0.005</u>
<u>Nitrogen oxides</u>	<u>2.0</u>
<u>PM-10</u>	<u>0.75</u>
<u>PM-2.5</u>	<u>0.5</u>
<u>Total suspended particulates</u>	<u>1.25</u>
<u>Sulfur dioxide</u>	<u>2.0</u>
<u>Volatile Organic Compounds, total</u>	<u>2.0</u>
((+)) Ozone Depleting Substances	1.0
((in effect on July 1, 2000)), total	
((+)) Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

~~(6) ((Application processing — completeness determination:~~

~~(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete~~

or notify the applicant in writing of all additional information necessary to complete the application.

(b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

(7) Final determination:

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision.

(b) A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must also comply with WAC 173-400-171.

(c) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(d) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-112, the permitting authority must:

(i) Submit any control technology determination included in a final order of approval for a major source or a major modification to a major stationary source in a nonattainment area to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(8) **Appeals.** Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The permitting authority must promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(9) **Construction time limitations.** Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing that an extension is justified. The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction

within eighteen months of the projected and approved commence construction date.

(10) Change of conditions:

(a) The owner or operator may request, at any time, a change in conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113, 173-400-720 and 173-460-040(3), as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a notice of construction application, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-455-120 applies to requests filed with ecology as notice of construction applications.

(11) **Enforcement.** All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.) **Portable source with order of approval.** A portable source is authorized to operate without obtaining a site-specific or a permitting authority specific approval order to relocate if the portable source complies with the provisions of WAC 173-400-036.

NEW SECTION

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. (1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) A complete application contains all the information necessary for processing the application. At a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source as well as the location, design, construction, and operation of the new source as needed to enable the permitting authority to determine that the construction or modification will meet the requirements of WAC 173-400-113. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be issued until the following criteria are met:

- (a) The requirements of WAC 173-400-112;
- (b) The requirements of WAC 173-400-113;
- (c) The requirements of WAC 173-400-171;
- (d) The requirements of WAC 173-400-200;
- (e) The requirements of WAC 173-400-800 through 173-400-860, as applicable; and
- (f) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

- (i) Issue a final decision on the application; or
- (ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of

WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source in a nonattainment area or a major modification of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

- (i) The change in conditions will not cause the source to exceed an emissions standard set by regulation or rule;
- (ii) No ambient air quality standard will be exceeded as a result of the change;
- (iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-112, 173-400-113, 173-400-720, 173-400-830, and 173-460-040, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(9) Fees. Chapter 173-455 WAC lists the required fees payable to ecology for various permit actions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-112 Requirements for new sources in nonattainment areas. ~~((1) Definitions.~~ The following definitions apply to this section:

(a) ~~"Major modification,"~~ for the purposes of WAC 173-400-112, means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

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

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

(A) Routine maintenance, repair and replacement;

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

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

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

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

(I) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

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

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

(iv) Any change in ownership at a source.

(v) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

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

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

(vi) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) ~~"Major stationary source,"~~ for the purposes of WAC 173-400-112, means:

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

(A) 70 tons per year of PM-10 in any "serious" nonattainment area for PM-10.

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

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

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

(iv) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (b)(i)(A) or (b)(i)(B) of this subsection:

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

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

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

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

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

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

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

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;
 (Y) Charcoal production plants;
 (Z) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and
 (AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(e) **"Net emissions increase,"** for the purposes of WAC 173-400-112, means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **"Significant,"** for purposes of WAC 173-400-112, means, in reference to a net emissions increase or the potential of a major stationary source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(e) **"Stationary source"** and **"source"** for the purposes of WAC 173-400-112 means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant. A stationary source (or source) does not include emissions resulting directly for an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

(f) **"Building, structure facility or installation"** means for the purposes of WAC 173-400-112, all the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, as amended by the 1977 supplement.

(g) The permitting authority that is reviewing an application to establish a new source in a nonattainment area shall issue the order of approval if it determines that the proposed project satisfies each of the following requirements:

((a)) (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

((b)) (2) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

((c)) (3) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113(3) for all air contaminants for which the area has not been designated nonattainment.

((d) If the proposed new source is a major stationary source or the proposed modification is a major modification, the permitting authority has determined, based on review of

an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(e) If the proposed new source or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions from the proposed new source or modification of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(i) The proposed new level of allowable emissions of the source or emissions unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits required by the Federal Clean Air Act, including the SIP, cannot be credited.

(ii) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2004).

(iii) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(f) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is a major modification within the mean-

ing of WAC 173-400-720, it meets the requirements of the PSD program in WAC 173-400-720 for all air contaminants for which the area has not been designated nonattainment.

(h) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(i) If the proposed new source is a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is a major modification within the meaning of WAC 173-400-720, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.)

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. The permitting authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or modification will not ((~~delay the attainment date for an area not in attainment nor~~)) cause or contribute to a violation of any ambient air quality standard. ((~~This requirement will be considered to be met if the projected impact of~~))

(4)(a) If the projected impact of the allowable emissions from the proposed new major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment, then the proposed new source or modification will not be considered to cause or contribute to a violation of an ambient air quality standard:

Table 4a: Cause or Contribute Threshold Values for Nonattainment Area Impacts

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
<u>PM_{2.5}</u>	<u>0.3 µg/m³</u>	<u>1.2 µg/m³</u>	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

~~((An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.~~

~~(4) If the proposed new source is a major stationary source or the proposed modification is a major modification, it meets all applicable requirements of WAC 173-400-720 through 173-400-750.~~

~~(5)) (b) A project that results in a projected impact inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction adequate to reduce the projected impacts to the above values or less. If the proposed project is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new major stationary source or major modification.~~

~~(5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet((s)) all applicable requirements of that program.~~

~~((6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the project meets the special protection requirements for federal Class I areas of WAC 173-400-117.))~~

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) Adoption by reference.

~~(a) 40 CFR Part 60 and Appendices in effect on ((October 1, 2006, is)) July 1, 2010, are adopted by reference. Exceptions are listed in subsection (1)(b) of this section.~~

~~((The following list of subparts to 40 CFR Part 60 which are shown as blank or reserved in the Code of Federal Regulations as of the date listed above, is provided for informational purposes only:~~

~~40 CFR Part 60, subparts FF, H, JJ, OO, YY, ZZ, CCC, EEE, MMM, XXX, YYY, ZZZ, GGGG, JJJJ, Appendix E, and Appendix H.))~~

~~(b) Exceptions to adopting 40 CFR Part 60 by reference.~~

~~(i) The term "administrator" in 40 CFR Part 60 includes the permitting authority.~~

~~(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:~~

~~(A) 40 CFR 60.5 (determination of construction or modification);~~

~~(B) 40 CFR 60.6 (review of plans);~~

~~(C) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, HHHH (emission guidelines); and~~

~~(D) 40 CFR Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.~~

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

AMENDATORY SECTION (Amending Order 07-10, filed 9/6/07, effective 10/7/07)

WAC 173-400-116 ((New source review fees.)) Increment protection. ~~((Fees can be found in chapter 173-455 WAC.))~~ This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 CFR 52.21(c) as published in the Federal Register as final rule on October 20, 2010.

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-131 Issuance of emission reduction credits. (1) **Applicability.** The owner or operator of any source may apply to the permitting authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. The old actual emissions rate is the average emissions rate occurring during the most recent twenty-four-month period preceding the request for an ERC. An alternative twenty-four-month period from within the previous five years may be accepted by the permitting authority if the owner or operator of the source demonstrates to the satisfaction of the permitting authority that the alternative period is more representative of actual operations of the unit or source.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The reduction must be: Greater than otherwise required by an applicable emission standard, order of approval, or regulatory order and be permanent, quantifiable, and federally enforceable.

(d) The ~~(ERC)~~ reduction must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

~~((e))~~ (e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC ~~((173-400-112(2)(d)))~~ 173-400-113(4) or 173-400-830, nor as part of a bubble transaction under WAC 173-400-120, ~~(, nor to satisfy NSPS, NESHAPS, for Source Categories, BACT, or LAER).~~

~~((e))~~ (f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or

for reasonable further progress in an amendment to the state implementation plan.

(g) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a federally enforceable regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

~~((h))~~ (h) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through ~~((e))~~ (h) of this section have been satisfied or not. If the application is approved, the permitting authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through ~~((e))~~ (h) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminants involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued. The emission reduction credit listed in the certificate shall be less than the amount of emission reduction achieved by the source. The difference between the emission reduction and the emission reduction credit must be a decrease of at least one ton per year or one percent of the emission reduction, whichever decrease is greater.

(c) The certificate of emission reduction credit shall include the expiration date of the credit.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120; as a part of a determination of "net emissions increase;" or as an offsetting reduction to satisfy the requirements for new source review in WAC ~~((173-400-112))~~ 173-400-830 or 173-400-113~~((3))~~ (4) or to demonstrate a creditable emission reduction for permitting under WAC 173-400-720.

(2) **Surrender of ERC certificate.** When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the permitting authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An ERC may be used only for the air contaminants for which it was issued.

(b) The permitting authority may impose additional conditions of use to account for temporal and spatial differences between the emissions units that generated the ERC and the emissions units that use the ERC.

(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused ERC expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard, ~~if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by the permitting authority after public involvement according to WAC 173-400-171. This discount shall not exceed the percentage of additional emission reduction needed to reach attainment), issued ERCs may be discounted as necessary to reach attainment.~~

(a) Issued ERCs may be discounted if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-171 Public ~~(involvement)~~ notice. The purpose of this section is to specify the requirements for notifying the public about air quality permit actions and to provide opportunities for the public to participate in those permit actions.

(1) 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 173-400-720. 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 ((notification)) notice of ((receipt of an)) application.~~

(a) For those applications and actions not subject to a mandatory public ~~((notice and))~~ comment period per subsection ~~((2)(a))~~ (3) of this section, the permitting authority ~~((will either:~~

(i) ~~Post on the permitting authority's internet web site))~~ must post an announcement of the receipt of notice of construction applications and other proposed actions ~~((or~~

(ii) ~~Follow the public involvement process found in subsection (3) of this section))~~ on the permitting authority's internet web site.

(b) ~~((For))~~ The internet ((notification, notice shall)) posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting ~~((shall))~~ 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.

~~((e))~~ (d) Requests for a public comment period ~~((shall))~~ must be submitted to the permitting authority in writing via letter, fax, or electronic mail ~~((within fifteen days of its))~~ during the fifteen-day internet posting period.

(e) A public ~~((notice and))~~ comment period ~~((shall))~~ must be provided ~~((pursuant to subsections (3) and (4) of this section))~~ for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day ~~((comment))~~ internet posting period.

~~((d))~~ Any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section or for which the agency proposes to have a public comment period does not have to be announced on the permitting authorities' internet web site.

~~(2) Actions))~~ (3) **Actions subject to a mandatory public ~~(notice and)~~ comment period.**

~~((a))~~ 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:

(i) 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 ((any)) 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 levels as regulated under chapter 173-460 WAC ((which will increase above the small quantity emission rate listed in WAC 173-460-080 (2)(e) would result)); or

~~((i))~~ (c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on ~~((October 1, 2006))~~ July 1, 2010) as part of review under WAC 173-400-110, ~~((173-400-112;))~~ 173-400-113, 173-400-117, or 173-400-720; or

~~((iii))~~ (d) Any order to determine reasonably available control technology, RACT; or

~~((iv))~~ (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.

~~((v))~~ (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

~~((vi))~~ (g) An order to authorize a bubble; or

~~((vii))~~ (h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136~~((6))~~; or

~~((viii))~~ (i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

~~((ix))~~ (j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or

~~((x))~~ (k) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

~~((xi))~~ (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

~~((xii))~~ (m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

~~((xiii))~~ Exception. PSD actions, under WAC 173-400-730 and 173-400-740 are not required to follow the procedures in this section. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740.

(b) Ecology must provide notice on the following ecology only actions:

(i) A Washington state recommendation that will be submitted by the director of ecology to EPA for approval of a SIP revision, including plans for attainment, maintenance, and visibility protection; or

(ii) A Washington state recommendation to EPA for designation or redesignation of an area as attainment, nonattainment, or unclassifiable; or

(iii) A Washington state recommendation to EPA for a change of boundaries of an attainment or nonattainment area; or

(iv) A Washington state recommendation to EPA for redesignation of an area under WAC 173-400-118.

(c) The permitting authority will provide public notice before approving or denying any application or other action for which the permitting authority determines there is substantial public interest.

(d) A notice of construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines. A project designated for integrated review that includes a notice of construction application for a major modification in a nonat-

tainment area, or a notice of construction application for a major stationary source in a nonattainment area must also comply with public notice requirements in this section. A project designated for integrated review that includes a PSD permit application must also comply with the requirements in WAC 173-400-730 and 173-400-740.

~~(3) Public notice.~~ (n) Any application or other action for which the permitting authority determines that there is significant public interest.

~~(4) Advertising the mandatory public comment period.~~ Public notice of all applications, orders, or actions listed in subsection (3) of this section must be published in a newspaper of general circulation in the area where the source or sources are or will be located. This public notice ~~(shall)~~ can be ~~(made)~~ published 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. The notice must be published before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice. ~~(Public notice shall include:~~

~~(a) Availability for public inspection;)~~

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

~~((i))~~ For a redesignation of a class II area under WAC 173-400-118, ecology must make available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.

~~((ii))~~ For a revision of the SIP subject to subsection (2)(b)(iii) of this section, ecology must make available for public inspection the information related to the action at least thirty days before the hearing.

~~(b) Newspaper publication.~~ Public notice of the proposed project must be published in a newspaper of general circulation in the area of the proposed project and must include:))

~~(6) Published notice components.~~

~~(a) The notice must include:~~

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

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

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

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

~~((iv))~~ (v) A thirty-day period for submitting written comment to the permitting authority;

~~((v))~~ (vi) A statement that a public hearing ~~(may)~~ will be held if the permitting authority determines ~~(within a thirty-day period)~~ that there is significant public interest ~~(exists or);~~

~~(vii) The time, date and location of the public hearing for those ecology only actions listed in ((WAC 173-400-171(5)(b) with a mandatory public hearing requirement, the time, date, and location of the public hearing.~~

~~(vi) The length of the public comment period in the event of a public hearing)) WAC 173-400-171(12);~~

~~((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 ((in WAC 173-400-117(5)(e)), public notice ((shall either explain)) 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; and~~

~~((viii)) (c) For a redesignation of an area under WAC 173-400-118, ((public)) the notice ((shall)) must state that an explanation of the reasons for the proposed redesignation is available for review at the public location.~~

~~((e) Notifying EPA. A copy of the public notice will be sent to the EPA Region 10 regional administrator.~~

~~(d) Additional public notice requirements for a SIP revision. For a revision to the SIP that is submitted by the director of ecology, ecology must publish the public notice required by subsection (3)(b) of this section in the *Washington State Register* in advance of the date of the public hearing.~~

~~(4)) (7) **Length of the public comment period.**~~

~~(a) The public comment period must be at least ((the thirty-day period for written comment specified in the public notice)) thirty days long.~~

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

~~(c) The ((permitting authority shall make no)) final decision ((on any application or action of any type described in subsection (1) of this section)) cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.~~

~~((5) **Public hearings.**~~

~~((a)) (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 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 ((may hold a public hearing if it)) 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.~~

~~((b)) (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) Publish the notice of public hearing in a newspaper of general circulation in the area where the source or sources are or will be located; and~~

~~(ii) Mail the notice of public hearing to the applicant and to any person who submitted written comments on the application or requested a public hearing.~~

~~(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) The applicant must pay all publishing costs associated with meeting the requirements of this subsection.~~

~~(11) **Notifying the EPA.** The permitting authority must send a copy of the notice for all actions subject to the mandatory public comment period to the EPA Region 10 regional administrator.~~

~~(12) **Special requirements for ecology only actions.**~~

~~(a) Ecology must ((hold a hearing)) comply with the requirements of 40 CFR 51.102, in effect on July 1, 2010, on the following ecology only actions:~~

~~(i) A Washington state recommendation to EPA that will be submitted by the director of ecology for approval of a SIP revision including plans for attainment, maintenance, and visibility protection;~~

~~(ii) A Washington state recommendation to EPA for designation, redesignation, or a change of boundaries of an attainment area, or nonattainment area, or an unclassifiable area;~~

~~(iii) ((A Washington state recommendation to EPA for designation of an area as attainment, nonattainment, or unclassifiable; and~~

~~((iv)) A Washington state recommendation to EPA to redesignate ((an area)) Class I, II, or III areas under WAC 173-400-118.~~

~~((e) Ecology must provide at least thirty days prior notice of a hearing required under subsection (4)(b) of this section.~~

~~((6)) (b) The notice must comply with subsection (10) of this section.~~

~~(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.~~

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including nonroad engines as defined in section 216 of the Federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms

and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

- (a) Applicable emissions limitations and/or control requirements;
- (b) Best available control technology;
- (c) Appropriate operational restrictions, such as:
- (i) Criteria related to the physical size of the unit(s) covered;
- (ii) Criteria related to raw materials and fuels used;
- (iii) Criteria related to allowed or prohibited locations; and
- (iv) Other similar criteria determined by a permitting authority;
- (d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;
- (e) Appropriate initial and periodic emission testing requirements;
- (f) Compliance with chapter 173-460 WAC, ~~((and))~~ WAC 173-400-112 ~~((2)(c) or))~~ and 173-400-113 (3) and (4) as applicable;
- (g) Compliance with 40 CFR Parts 60, 61, 62, and 63; and
- (h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** ~~((A permitting authority shall provide an opportunity for public comment on))~~ Compliance with WAC 173-400-171 is required for a proposed new general order of approval or modification of an existing general order of approval ((in accordance with WAC 173-400-171)).

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) **Application for coverage under a general order of approval.**

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

- (i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;
- (ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;
- (iii) The requested emission unit or source is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-112 or 173-400-720; and
- (iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in subsection (5) of this section.

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in (a) or (b) of this subsection to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval thirty-one days after an application for coverage is received by the permitting authority, unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, under WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement

action for establishment of a new source in violation of WAC 173-400-110 if a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (1) The following sections are to be used by ecology when reviewing and permitting new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington.

(2) WAC 173-400-700 through 173-400-750 apply state-wide except:

(a) Where the authority has received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

(b) To projects under the jurisdiction of the energy facility site evaluation council site certification process pursuant to chapter 80.50 RCW.

~~((e) Applications or requests to designate an emissions unit as a Clean Unit under 40 CFR 52.21(y), to permit a Pollution Control Project under 40 CFR 52.21 (z)(5), or to establish an actual Plantwide Applicability Limit under 40 CFR 52.21(aa) shall be processed by the authority where the authority has received delegation from EPA to administer the relevant alternative PSD applicability tests.))~~

(3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting programs in WAC 173-400-110 and 173-400-800 through 173-400-860.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply ~~(shall)~~ is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

- (a) Receive all reports required in the PSD permit;
- (b) Enforce the requirement to apply for a PSD permit when one is required; and
- (c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

~~(i) (Allowable emissions from the proposed major stationary source or major modification will not delay the attainment date for an area not in attainment nor cause or contrib-~~

~~ute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:~~

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

~~An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.))~~ WAC 173-400-113 (3) and (4).

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

~~(iii) (WAC 173-400-730 - Prevention of significant deterioration application processing;~~

~~(iv) WAC 173-400-740 - Prevention of significant deterioration public involvement requirements.))~~ The proposed major new source or major modification will comply with all applicable new source performance standards (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), and emission standards adopted under chapter 70.94 RCW that have been incorporated into the Washington state implementation plan; and

~~((**))~~ (iv) The following subparts of 40 CFR 52.21, in effect on October (1, 2006) 20, 2010, and the amendments to 40 CFR 52.21 as published in the Federal Register as final rule on October 20, 2010, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21 (a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
<u>40 CFR 52.21 (p)(1) through (4)</u>	<u>Sources impacting federal Class I areas - additional requirements</u>
40 CFR 52.21 (r)	Source obligation.

Section	Title
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
((40 CFR 52.21 (x))	Vacated by federal Court Decision.
40 CFR 52.21 (y)	Vacated by federal Court Decision.
40 CFR 52.21 (z)	Vacated by federal Court Decision.))
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.
((40 CFR 52.21 (bb))	Severability clause.
40 CFR 52.21 (cc)	Vacated by federal Court Decision.))

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 CFR 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 CFR 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through ~~((t))~~ (p) (1) - (4) of this section, paragraph (r) of this section, WAC ~~((173-400-117,))~~ 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 CFR 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply ~~((t))~~ with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major station-

ary source (other than projects ~~((at a Clean Unit or))~~ at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit. For purposes of this paragraph (r)(6)(iii), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in 40 CFR 52.21 (b)(1)(iii) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be

generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions, as monitored pursuant to 40 CFR 52.21 (r)(6)(iii), during the calendar year that preceded submission of the report.

- (v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:
- (a) The name, address and telephone number of the major stationary source;
- (b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
- (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

~~((D))~~ (E) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

~~((E))~~ (F) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

~~((F))~~ (G) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

~~((G))~~ (H) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

~~((H))~~ (I) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in

chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

~~((I))~~ (J) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

(iv) 40 CFR 52.21 (r)(2) is not adopted by reference.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) Application submittal.

(a) The applicant shall submit an application that provides complete information (~~(adequate))~~ necessary for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for ~~((requests for a Clean Unit designation under 40 CFR 52.21(y), a pollution control project exemption under 40 CFR 52.21(z) or))~~ the initial request, renewal or expiration of a PAL under 40 CFR 52.21(aa) shall be done as provided in 40 CFR 52.21 (aa)(3) - (5), which is adopted by reference in WAC 173-400-720 (4)(a)(iv), except public participation must comply with WAC 173-400-720 (4)(b)(iii)(F).

(2) Application processing.

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) Within one year after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) As expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

- (a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;
- (b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;
- (c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;
- (d) The revised PSD permit will continue to require BACT(~~(, as defined at the time of the original PSD permit,)~~) for each new or modified emission unit approved by the original PSD permit; and
- (e) The revised PSD permit continues to meet the requirements of WAC 173-400-112(~~((2))~~), and 173-400-113 (3) and (4), as applicable.

(2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in chapter 173-455 WAC (~~((173-400-116 shaH))~~) also (~~((apply))~~) applies.

(3) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

- (a) Change of the owner or operator's business name and/or mailing address;
- (b) Corrections to typographical errors;
- (c) Revisions to compliance monitoring methods that do not reduce the permittee's or ecology's ability to determine compliance with the emission limitations; or
- (d) Any other revision that does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

NEW SECTION

WAC 173-400-800 Major stationary source and major modification in a nonattainment area. WAC 173-400-800 through 173-400-860 apply statewide except where a permitting authority has a permitting program for major stationary sources in a nonattainment area incorporated into the Washington state implementation plan as replacement for these sections.

These requirements apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

NEW SECTION

WAC 173-400-810 Major stationary source and major modification definitions. The definitions in WAC 173-400-030 are to be used in WAC 173-400-800 through

173-400-860 unless a term is defined differently in this section. The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in WAC 173-400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit program.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by the administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per

year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility

whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(7)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

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

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

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

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;

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

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

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

(i) Routine maintenance, repair and replacement;

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

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

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

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

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR Part 51, Appendix S adopted by reference in WAC 173-400-850 shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of vola-

tile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

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

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

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

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed

source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

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

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

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

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 or in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

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

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51 Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by the

administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming EPA rulemaking codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is

legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Reviewing authority means "permitting authority" as defined in WAC 173-400-030.

(27) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(28) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(29) Source means "stationary source" as defined in WAC 173-400-030.

(30) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

NEW SECTION

WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements. (1) Any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment under section 107 (d)(1)(A)(i) of the Federal Clean Air Act area shall use the following procedures to determine if the new stationary source or modification is subject to the permitting requirements of WAC 173-400-830 through 173-400-850.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project

causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) **Reasonable possibility:** The following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC

173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection (c), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC.

NEW SECTION

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The proposed new major stationary source or a major modification of an existing major stationary source and the permitting authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable new source performance standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source or major modification to an existing major stationary source is major.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment

area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program in WAC 173-400-720 for all air contaminants for which the area has not been designated nonattainment.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO_x waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 CFR 51.165 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

NEW SECTION

WAC 173-400-840 Emission offset requirements. (1)

The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (a) In any marginal nonattainment area for ozone - 1.1:1;
- (b) In any moderate nonattainment area for ozone - 1.15:1;
- (c) In any serious nonattainment area for ozone - 1.2:1;
- (d) In any severe nonattainment area for ozone - 1.3:1;

and

- (e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets not included in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at

the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset

in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(8) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.

NEW SECTION

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of July 1, 2010, is adopted by reference with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 CFR 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

NEW SECTION

WAC 173-400-860 Public involvement procedures. The public involvement procedures in WAC 173-400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued pursuant to WAC 173-400-830 or 173-400-850 must comply with WAC 173-400-171.

NEW SECTION

WAC 173-400-930 Emergency engines. (1) Applicability.

(a) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(b) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(c) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(d) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(e) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines, contained in 40 CFR Part 89.112 Table 1 and 40 CFR Part 1039.102 Tables 6 and 7, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing or other nonemergency use.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

Included in comprehensive review of all of the board's rules to:

- Recognize on-line services' impact on procedures.
- Use consistent language throughout the rules.
- Incorporate board policy into rule.
- Add new rules to accommodate changes in environment.
- Reorganize the rules resulting in renumbering and grouping into like functions.

Citation of Existing Rules Affected by this Order:

WAC Section	Title	New WAC Section	Grouping
4-25-640	What are the requirements concerning records and clients confidential information?	4-30-050	Ethics and Prohibited Practices
4-25-670	What enforcement actions must be reported to the board?	4-30-036	Board Administration

New WAC Section	Title	Grouping
4-30-051	What are the requirements concerning client records, including response to requests by clients and former clients for records?	Ethics and Prohibited Practices

Statutory Authority for Adoption: For WAC 4-25-640 is RCW 18.04.055(2), 18.04.390 (4)(b), 18.04.405(1); for WAC 4-25-670 is RCW 18.04.195 (13)(b), 18.04.215 (9)(b); and for WAC 4-30-051 is RCW 18.04.055(2), 18.04.390 (4)(b), 18.04.405(1).

Adopted under notice filed as WSR 10-24-039 on November 23, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12 [1], Amended 0 [2], Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: January 27, 2011.

Richard C. Sweeney
Executive Director

WSR 11-06-062

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed March 2, 2011, 8:35 a.m., effective April 2, 2011]

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

Purpose: (1) Amend and decodify WAC 4-25-640 What are the requirements concerning records and clients confidential information?, (2) separate the portion of WAC 4-25-640 dealing with client records into new WAC 4-30-051 What are the requirements concerning client records, including response to requests by clients and former clients for records?, and (3) amend and decodify WAC 4-30-670 What enforcement actions must be reported to the board?

NEW SECTION

WAC 4-30-051 What are the requirements concerning client records, including response to requests by clients and former clients for records? (1) The following terms are defined below solely for use with this section:

(a) **Client provided records** are accounting or other records belonging to the client that were provided to the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons by or on behalf of the client.

(b) **Client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner** are accounting or other records (for example, tax returns, general ledgers, subsidiary journals, and supporting schedules such as detailed employee payroll records and depreciation schedules) that the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons was engaged to prepare for the client.

(c) **Supporting records** are information not reflected in the client's books and records that are otherwise not available to the client with the result that the client's financial information is incomplete. For example, supporting records include adjusting, closing, combining or consolidating journal entries (including computations supporting such entries), that are produced by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons during an engagement.

(d) **Licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner working papers** include, but are not limited to, audit programs, analytical review schedules, statistical sampling results, analyses, and schedules prepared by the client at the request of the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons.

(2) When a client or former client (client) makes a request for client-provided records, client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner, or supporting records that are in the custody or control of the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner that have not previously been provided to the client, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should respond to the client's request as follows:

(a) Client provided records in the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner custody or control must be returned to the client.

(b) Client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner must be provided to the client, except that client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner may be withheld if the preparation of such records is not complete.

(c) Supporting records relating to a completed and issued work product must be provided to the client.

(d) Persons subject to this subsection developing and maintaining such records, or schedules should make a reasonable effort to provide the required information and data to the client in a format useable by the client to avoid the cost to the client of duplicate reentry of individual transaction or other information into the client's or successor custodian's record-keeping system.

(3) The licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is not required to convert records that are not in electronic format to electronic format. However, if the client requests records in a specific format and the

licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner was engaged to prepare the records in that format, the client's request should be honored.

(4) Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and/or employees of such persons must not refuse to return or provide records indicated in subsection (1)(a), (b), and (c) of this section including electronic documents, pending client payment of outstanding fees.

(5) Once the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons has complied with the requirements in subsection (2) of this section, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should comply with an additional request to provide such records.

(6) Licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner working papers are the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner property and need not be provided to the client under provisions of this section; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

(7) In connection with any request for client-provided records, client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons, or supporting records, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner may:

(a) Charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client;

(b) Provide the requested records in any format usable by the client;

(c) Make and retain copies of any records returned or provided to the client.

(8) Where a licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is required to return or provide records to the client, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than forty-five days after the request is made. The fact that the statutes of the state in which the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner practices grants the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner a lien on certain records in his or her custody or control does not relieve the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner of his or her obligation to comply with this section.

(9) A licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service(s) performed.

(10) Audit and review record retention requirements: For a period of seven years after a licensee concludes an audit

or review such persons must retain the following records and documents, including electronic records unless hard copies of such exist:

- (a) Records forming the basis of the audit or review;
- (b) Records documenting audit or review procedures applied;
- (c) Records documenting evidence obtained including financial data, analyses, conclusions, and opinions related to the audit or review engagement; and
- (d) Records documenting conclusions reached by the licensee in the audit or review engagement.

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-640 What are the requirements concerning records and clients confidential information? (1) **Client:** The term "client" as used throughout ~~((this section))~~ WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client in an initial interview to obtain or provide professional services.

~~((2))~~ ~~((Property of the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner: In the absence of an express agreement between a licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a licensee incident to or in the course of professional service to clients, except reports submitted by a licensee, are the property of the licensee.~~

~~((3))~~ **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest.

~~((4))~~ **(3) Confidential client communication or information:** Licensees, CPA-Inactive certificate holders, nonlicensee firm owners ~~((, or employees of such persons))~~ must not without the consent of the client or the heirs, successors ~~((or personal))~~, authorized representatives or employee of the client disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

(4) This rule does not:

- (a) Affect in any way the obligation of those persons to comply with a lawfully issued subpoena or summons;
- (b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;
- (c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

~~((5) Client records: Licensees, CPA Inactive certificate holders, nonlicensee firm owners, and employees of such persons must furnish to their client or heirs, successors or personal representatives, upon request and reasonable notice:~~

~~(a) A copy of records, schedules, and electronic documents of those persons, to the extent that such records and schedules would ordinarily constitute part of the client's records and are not otherwise available to the client; and~~

~~(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, that the licensee, CPA Inactive certificate holder, or nonlicensee firm owner, or employees of such persons removed from the client's premises or received for the client's account, including electronic documents; but such persons may make and retain copies of such documents of the client when they form the basis for the professional services offered or rendered by those persons.~~

~~(c) Licensees, CPA Inactive certificate holders, nonlicensee firm owners, and/or employees of such persons must not refuse to return client records, including electronic documents, pending client payment of outstanding fees.~~

~~(6) Audit and review record retention requirements: For a period of seven years after a licensee concludes an audit or review such persons must retain the following records and documents, including electronic records unless hard copies of such exist:~~

~~(a) Records forming the basis of the audit or review;~~

~~(b) Records documenting audit or review procedures applied;~~

~~(c) Records documenting evidence obtained including financial data, analyses, conclusions, and opinions related to the audit or review engagement; and~~

~~(d) Records documenting conclusions reached by the licensee in the audit or review engagement.))~~

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-670 What enforcement actions must be reported to the board? (1) A licensee, CPA-Inactive certificate holder, or nonlicensee firm owner must notify the board, of the following matters, in the manner prescribed by the board, within **thirty days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner com-

mitted a prohibited act that would be a violation of board ethical or technical standards.

~~(2) ((Individual licensees and sole proprietors are to report action pursuant to subsection (1) of this section taken against the individual's license and/or the license of the sole proprietorship.~~

~~(3))~~ Licensed CPA firms with more than one licensed owner are not required to report on action taken against owners, principals, partners, or employees.

~~((4))~~ (3) If you hold a license or CPA-Inactive certificate issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within thirty days of receiving notice that an investigation has begun or a sanction was imposed.

NEW SECTION

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC Number	New WAC Number
4-25-640	4-30-050
4-25-670	4-30-036

WSR 11-06-070

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 2, 2011, 10:42 a.m., effective April 2, 2011]

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

Purpose: The board is permanently prohibiting the importation, manufacture, sale or distribution of alcohol energy drinks in the state of Washington. The mission of the Washington state liquor control board (WSLCB) includes ensuring the responsible sale, and preventing the misuse of, alcohol. As part of this mission, the WSLCB endeavors to ensure that products which pose a threat to public safety are handled appropriately. The board is particularly concerned about alcohol energy drinks, which are marketed in a way that implies the consumption of these beverages has a stimulating or energizing effect. These beverages promote a situation where people may become inebriated, but cannot judge their own condition, which is contrary to human health and public safety. This is contrary to the mission of the WSLCB.

Statutory Authority for Adoption: RCW 66.08.010, 66.08.030, 66.24.261, 66.28.120.

Adopted under notice filed as WSR 11-03-040 on January 12, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 2, 2011.

Sharon Foster
Chairman

NEW SECTION

WAC 314-20-022 Alcohol energy drinks. (1) No product that combines beer, strong beer, or malt liquor with caffeine, guarana, taurine, or other similar substances, which are commonly referred to as "alcohol energy drinks," may be imported into the state, produced, manufactured, distributed, sold or offered for sale by a licensed retailer in the state of Washington.

(2) Beer, strong beer, or malt liquor with coffee, chocolate, or other natural substances used for flavorings, are not prohibited under this section.