

Requirements for new sources in nonattainment areas.

(1) **Definitions.** The following definitions in WAC 183-400-810 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~~
 - ~~— (II) 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.
- (c) "**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

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PM 10:

15 tpy

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~~— (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.~~

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~~— (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.~~

(2) 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) 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) 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) 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) All permitting requirements of WAC 173-400-820 through 850 are complied with for those air pollutants for which the location of the new stationary source or proposed modification is not in attainment with a NAAQS.~~

~~(3) All permitting requirements of WAC 173-400-113 are complied with for toxic air pollutants and all air pollutants for which the location of the new major stationary source or major modification is classified as attainment or unclassifiable.~~

Comment [ARN1]: I think this works to link the attainment pollutants back to the generic criteria given in section 113.

~~(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.~~

Comment [ARN2]: All other text moved to sections 820 – 840.

~~— (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 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) 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.

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.

Comment [ARN3]: The original version of this text is derived from 40 CFR 51.165(b)(2) (3) and (4). The current version does not contain all of the text in those sections.

(4)(a) This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification are considered to cause or contribute to a violation of a national ambient air quality standard when the allowable emissions from the proposed new source or modification is projected to increase the nonattainment area pollutant concentration at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:

Table: 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	-	-	-
PM_{2.5}	-	-	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

Comment [ARN4]: Placeholder incase EPA finalizes rules in time to include in this revision.

~~(b) A proposed new source or source proposing a modification that results in a projected impact inside a nonattainment area above the appropriate value in the table of (4)(a) above may use an offsetting emission reduction reduction adequate to reduce the projected impacts to the above values or less, may be used to satisfy some or all of the requirements of this subsection.~~

Comment [ARN5]: This will need editing for clarity. Concept in the fed language is that the offset needs to have effect at the location(s) the impacts are modeled above the levels in the table. Concept is also to prevent use of the table values inappropriately as a screening value for attainment area NAAQS evaluations.

~~(c) If the proposed new source or source being modified is unable to obtain offsetting emissions reductions, the permitting authority shall deny approval to construct and operate the proposed new source or modification.~~

Comment [ARN6]: This is directly from 40 CFR 51.165(b)(3).

(45) 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 (720(4)(a)(i)?) through 173-400-750.

(57) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

(67) 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.

[Statutory Authority: RCW 70.94.152, 05-03-033 (Order 03-07), § 173-400-113, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, 70.94.152, 70.94.1331, 70.94.1510 and 43.21A.080, 01-17-062 (Order 99-06), § 173-400-113, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW, 93-18-007 (Order 93-03), § 173-400-113, filed 8/20/93, effective 9/20/93.]

WAC 173-400-114 Protection of Prevention of Significant Deterioration Increments

(1) PSD increments as given in (2) shall be not be exceeded through the permitting of any source or stationary source. Ecology will periodically review and evaluate increment consumption in the state and inform the other permitting authorities of the results of the review. Within 60 days of such time as information becomes available to ecology than an applicable increment is or may be violated, the adequacy of the state implementation plan will reviewed for adequacy in protecting increment from being exceeded. 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

either insert the table from 51.166(c) or reference the same table in 52.21(c), either works

(3) Exclusions from increment consumption. (1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

- (a) Concentrations of particulate matter, PM10, or PM2.5, 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 Environmental Protection Agency.. This exclusion shall not exceed two years unless a longer time is approved by the EPA, is not renewable, and applies only to revision which:
 - (i) would not effect regulated air pollutant concentrations in a Class I area or an area where an applicable increment is known to be violated and would not cause or contribute to a violation of an ambient air quality standard; and
 - (ii) Require limitations to be in effect at the end of the approved (up to two year) time period which would ensure that the emissions form facilities affected by the revision would not exceed those concentrations occurring before the revision was approved.

WAC 173-400-720 or 114?

(???) Exemptions. The requirements equivalent to those contained in 40 CFR 52.21(j) through (r) do not apply to a particular major stationary source or major modification if:

- (a) The major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or
- (b) The source or modification is a portable stationary source which has previously received a permit under requirements equivalent to those contained in paragraphs (j) through (r) of this section, if:
 - (i) The source proposes to relocate and emissions of the source at the new location would be temporary; and
 - (ii) The emissions from the source would not exceed its allowable emissions; and
 - (iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - (iv) Reasonable notice is given to the permitting authority prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the permitting authority as prescribed in the permit, but in no event, not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the reviewing authority.
- (c) The requirements contained in 40 CFR 52.21(k), (m), and (o) do not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a

Comment [ARN7]: This could also be part of section 113 instead.

Comment [Tom Todd8]: This needs to be included in 113

Comment [ARN9]: This is an explicit requirement for getting a SIP approved PSD program. However, the explicit requirement also allows us to clean up some issues related to temporary and portable sources and increment protection. See proposed (3) below.

Comment [ARN10]: The exemptions are from 40 CFR 51.166(f). These are not in the 52.21 version of the program.

Comment [Tom Todd11]: 720 would be best

Comment [ARN12]: Copied form 40 CFR 51.166(i).

Comment [ARN13]: Copied from 51.166(i)(3)

modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

Comment [ARN14]: This is the EPA policy of 2 years is temporary.

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 24 month period preceding the request for an ERC.
 - (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 or order of approval, permanent, quantifiable and federally enforceable.
 - (ed) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.
 - (de) 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 173-400-1123-(2)-(4) or WAC 173-400-820??, nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS, ~~for Source Categories~~, BACT, or LAER.
 - (f) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress.
 - (eg) 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.
 - (fh) 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 (eh) 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

Comment [ARN15]: Oregon and Idaho specify that this is tons per year. Do we want to do the same? We could also use kg/hr per the definition of 'modification' as an alternate.

Comment [Tom Todd16]: Tons per year is better,

Comment [ARN17]: Much of this seems to be derived from 51.165(a)(3). Other aspects are implementing the outline given in RCW 70.94.850.

Comment [ARN18]: What this means has been an issue several times over the past 15 years. The AQP position has usually been that this is the average of the most recent 2 years (24 months) of unit/plant emissions, even if that period has no emissions. An alternate could be the last 2 years the stationary source or source was in operation, but this seems to be counter to the spirit of the federal guidance and what is approved in SIPS. Inserted text is a suggestion to consider.

Comment [Tom Todd19]: I do not like the notion of the last 2 years. It should be the last 2 years of operation. That way the 6 months in (2) does not average out to zero.

Comment [ARN20]: Original EPA term "surplus". This is what is meant by surplus. Can always go back to 'surplus'.

Comment [ARN21]: This whole thought is missing in the current version (51.165(a)(3)(ii)(C)(1)(i))

Comment [Tom Todd22]: I like the description. It is short and does not require adding a new definition.

Comment [ARN23]: 51.165(a)(3)(ii)(C)(1)(i) and 51.165(a)(3)(ii)(G)

Comment [ARN24]: 51.165(a)(3)(ii)(E)

document shall include any conditions required to assure that subsection (3)(a) through (eh) 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.

(c) The certificate of emission reduction credit shall include the expiration date of the credit.

[Statutory Authority: RCW [70.94.152](#). 05-03-033 (Order 03-07), § 173-400-131, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter [70.94](#) RCW, RCW [70.94.141](#), [70.94.152](#), [70.94.1331](#), [70.94.1510](#) and [43.21A.080](#). 01-17-062 (Order 99-06), § 173-400-131, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter [70.94](#) RCW. 93-18-007 (Order 93-03), § 173-400-131, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-131, filed 2/19/91, effective 3/22/91.]

Comment [ARN25]: To put certainty on what 'less' means, we could specify the credit is no larger than 99% of the reduction achieved and fully meet the letter of the law.

Comment [Tom Todd26]: 99% is better

Comment [ARN27]: The added text is to make up for an inconsistency between the historical rule text and the requirement in RCW 70.94.850 that the ERC be for less than the emission reduction

Comment [ARN28]: This ties the loop to the credit lifetime in section 136.

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 173-400-8](#), [WAC 173-400-112](#) or [173-400-113](#) ~~(34)~~ or to demonstrate a creditable emission reduction for permitting under WAC 173-400-7 0.

(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.

(c) An ERC issued to a source in a nonattainment area for the pollutant the area is in nonattainment can only be used within that nonattainment area. If the ERC lifetime lasts beyond the time attainment has been achieved, and the reduction contained in the ERC was not relied on in making the demonstration of attainment, the ERC may be traded or sold for use outside the former nonattainment area.

(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 to assure attainment can be achieved, all or any individual ERC may be discounted by the permitting authority after notice to the public involvement according to WAC [173-400-171](#). This discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

[Statutory Authority: RCW [70.94.152](#), 05-03-033 (Order 03-07), § 173-400-136, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter [70.94](#) RCW, RCW [70.94.141](#), [70.94.152](#), [70.94.1331](#), [70.94.1510](#) and [43.21A.080](#), 01-17-062 (Order 99-06), § 173-400-136, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter [70.94](#) RCW, 93-18-007 (Order 93-03), § 173-400-136, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-136, filed 2/19/91, effective 3/22/91.]

Comment [ARN29]: Unless Ecology chooses to allow interpollutant trading for PM2.5 precursors and direct PM2.5.

Comment [Tom Todd30]: Lets leave it direct for direct at this time. Our current PM2.5 area involves no precursors.

Comment [ARN31]: Should this be modified to assure that the reason to impose additional conditions is to assure that the emissions in the ERC have a similar magnitude of effect at within the nonattainment area? Or some such requirements? Idea is to clarify for a reader that an ERC generated in Pacific county will not get much credit for use in Pend Oreille county.

Comment [Tom Todd32]: I think that the concept is clear enough here. The projected audience is mainly air pollution professionals. If others ask we can answer the question.

Comment [ARN33]: I keep getting asked questions about a credit bank or other central accounting system for credits that are available for trade. Do we want to add additional tracking provisions for issued credits? Like in either this section or the previous one about the permitting authority keeping a log of issued ERCs, including logging of sales and usage?

Comment [Tom Todd34]: These are mainly used and needed in one geographical area. Tracking by the issuing authority should be sufficient.

Comment [ARN35]: Review of the difference between the PSCAA approved version in 1993 and the Ecology version seems to be solely the lifetime of the credit (PSACC had a 5 year lift, ECY had 10 and the PSD program had 5 at that time). Since PSD look-back is now 10 years, the 10 year period should be acceptable.

Comment [Tom Todd36]: I agree with your comment above

Comment [ARN37]: EPA guidance indicates that the discount would be to assure that reductions due to RACT requirements are reflected in the amount of credits available in an individual ERC or in the total of all banked ERCs in the nonattainment area. Other than the clarifying text proposed, no additional text seems to be needed, nor is it in example text in other Region 10 approved SIPs.

WAC 173-400-120

Bubble rules.

(1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble 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) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting authority.

(a) The contaminants exchanged must be of the same type, that is, PM₁₀ for PM₁₀, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards. No bubble shall be authorized in a nonattainment area unless there is an EPA-approved SIP which demonstrates attainment for that area.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized ~~only~~ for opacity limits. ~~However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:~~

~~(i) The new opacity limit shall be specific for the given emissions unit;~~

~~(ii) The new opacity limit shall be consistent with the new particulates limit;~~

~~(iii) An opacity greater than sixty percent shall never be authorized;~~

~~(ivg) If ~~the a~~ given emissions unit (stationary source) emits or has the potential to emit one hundred tons per year or more of particulate matter, the opacity shall be monitored continuously.~~

~~(gh) The emission limits of the bubble are equivalent to existing limits in enforceability.~~

~~(hi) Concurrent with or prior to the authorization of a bubble, each emission unit involved in a bubble shall receive or have received a regulatory order or permit that establishes total allowable emissions from the source for the contaminant being bubbled, expressed as weight of the contaminant per unit time.~~

~~(ij) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.~~

Comment [ARN38]: I suspect based on how EPA has dealt with the alternative opacity limits provision of state law, that this text can not be approved. As such any revision would need to delete the concepts.

Comment [ARN39]: If this is to be conceived as a minor source PAL< then the opacity threshold should be smaller, say 50 tons? The major source PAL kicks in at the 100 tpy level and the amount of information required goes up exponentially from what seems to be envisioned here.

Comment [Tom Todd40]: I suspect that if we set the limit at 50 tons we will get comments, but let's try it.

(k) Specific situations may require additional demonstration as requested by the permitting authority.

(3) Jurisdiction. Whenever a bubble application involves a source with emissions units, ~~some of which are~~ under the jurisdiction of ~~an~~ more than one permitting authority, approval will require concurrence by ~~both~~ all permitting authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, the permitting authority may require the submission of additional information needed to review the application.

(5) ~~Approval-Application Processing:~~ Within thirty days after all the required information has been received, the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (k) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit affected by the bubble.

(6) Approval Content Requirements: The regulatory order or equivalent document approving the bubble shall include:

(a) ~~any monitoring recordkeeping and reporting requirements adequate conditions required~~ to assure that subsection (2)(a) through (j) of this section will be satisfied.

(b) Reports required in (a) shall occur no less frequently than every 6 months.

(c) If the bubble 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 may require its removal.

(c) The regulatory order establishing the bubble is subject to the public involvement requirements of WAC 173-400-171.

[Statutory Authority: RCW 70.94.152, 05-03-033 (Order 03-07), § 173-400-120, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW. 93-18-007 (Order 93-03), § 173-400-120, filed 8/20/93, effective 9/20/93; 91-05-064 (Order 90-06), § 173-400-120, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. 89-02-055 (Order 88-39), § 173-400-120, filed 1/3/89; 83-09-036 (Order DE 83-13), § 173-400-120, filed 4/15/83. Statutory Authority: RCW 70.94.331. 80-11-059 (Order DE 80-14), § 173-400-120, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. 79-06-012 (Order DE 78-21), § 173-400-120, filed 5/8/79; Order DE 76-38, § 173-400-120, filed 12/21/76. Formerly WAC 18-04-120.]