# Cover Page

In October 2024, Ecology announced rulemaking for a new rule, Chapter 173-448 WAC, Air Quality in Overburdened Communities. Following that announcement, we hosted public workshops, where we discussed various topics, such as: criteria air pollutants and data sources, air quality targets, and emission reduction strategies. After taking some time to map out how these various pieces may work together, we are sharing initial draft rule language to help achieve air quality benefits for overburdened communities highly impacted by air pollution.

## What is this document?

This is a preliminary draft of rule language to implement parts of RCW 70A.65.020, Environmental justice review. We are particularly interested in your input on parts of the draft rule that include placeholder text.

## Where are we in the rulemaking process?

We are still in the development phase of rulemaking. This means that we are not yet at the point of formally proposing a rule. This is important because in this phase we especially appreciate and invite collaborative dialogue and input.

After holding multiple public meetings where we walked through foundational information key to air quality, we spent time considering what the statute says needs to be accomplished and how we might achieve that. We hope that this preliminary draft rule language will help spur additional thoughts and comments.

## What comes next?

Along with sharing this preliminary draft rule language, we are opening a comment period that ends on January 18, 2026, to gather your input on the draft rule language. Additionally, we will host at least one virtual public meeting in mid-December 2025, to discuss this preliminary draft and answer questions you may have.

After this informal comment period closes, we will work toward a formal rule proposal by evaluating the comments received and revising the draft rule language as necessary.

We hope to host another public meeting in February 2026, to discuss what we heard during the comment period and highlight any substantial clarifications made in the draft rule language.

We anticipate that a formal proposal of the new rule, Chapter 173-448 WAC, may potentially be ready in late Spring 2026.

# CHAPTER 173-448 WAC

## Air Quality in Overburdened Communities Highly Impacted by Air Pollution

### WAC 173-448-010 Policy and purpose.

(1) Ecology's policy under chapter 70A.65.020 RCW[1] is to reduce criteria air pollution and greenhouse gas emissions in overburdened communities highly impacted by air pollution.

(2) This chapter outlines processes for reducing criteria air pollution in overburdened communities highly impacted by air pollution. This chapter is a component of improving air quality in overburdened communities highly impacted by air pollution. Overburdened communities highly impacted by air pollution are also referred to as "identified communities" throughout this chapter.

### WAC 173-448-020 Applicability.

(1) This chapter applies to sources of air pollution that cause or contribute to criteria air pollution in communities that are overburdened and highly impacted by air pollution as determined through Ecology's current Policy[2] and required under RCW 70A.65.020(1)(a).

(2) A source of air pollution may be covered under this chapter if it is subject to the Washington Clean Air Act, Chapter 70A.15 RCW[3], and operates, or seeks to operate, inside the boundaries of an identified community and its emissions of a criteria pollutant or criteria pollutant precursor are determined to cause or contribute to criteria air pollution in the identified community.

### WAC 173-448-030 Definitions and acronyms.

"Air Quality Monitor" means an instrument used to measure pollutant concentrations in the air and provide data about air quality.

"Air Quality Sensor" means an instrument used to estimate pollutant concentrations in the air and provide general information about air quality.

"Air Quality Target" means the ambient air concentration of a criteria pollutant that this chapter aims to achieve in overburdened communities highly impacted by air pollution.

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[1] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.020

[2] https://apps.ecology.wa.gov/publications/summarypages/2302016.html

[3] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.15

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

"Criteria Pollutant Precursor" means sulfur oxides (SOx), nitrogen oxides ($NO_X$), volatile organic compounds (VOC), and ammonia ($NH_3$).

"Design Value" means a statistic that describes the air quality status of a given location relative to the level of a National Ambient Air Quality Standard, as described in 40 C.F.R. Part 50, for a criteria pollutant.

"Enforceable Order"' means a regulatory order issued by Ecology or a local air authority that requires compliance with:

(a) Any applicable provision of chapter **70A.15** RCW or rules adopted thereunder; or

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

"Greatest Contributors" means the emission source categories that cause or contribute to the majority of a criteria air pollutant in an identified community.

"High Priority Significant Emitters" also referred to as "high priority emitters" means the sources or entities with emissions of a criteria pollutant or criteria pollutant precursor that are determined to cause or contribute to criteria air pollution in an identified community. They are permitted or registered sources located within an identified community, that may be required to reduce emissions. Sources that meet the requirements to register or obtain a permit are subject to this chapter regardless of whether they are registered or have obtained a permit. Additional criteria for inclusion as a high priority emitter are listed under WAC 173-448-070.

"Identified Communities" means the overburdened communities highly impacted by air pollution that are determined through Ecology's current Policy[4] as required under RCW 70A.65.020(1)(a).

"Neighboring Communities" means areas located within the same region as the identified community that correspond to Ecology's current regional offices.[5] Neighboring communities do not include overburdened communities that are highly impacted by air pollution.

"Reduction Target" means the reduction needed for an identified community to meet its air quality target.

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[4] https://apps.ecology.wa.gov/publications/summarypages/2302016.html

[5] https://ecology.wa.gov/about-us/contact-us

"Washington Ambient Air Monitoring Network" means the air quality monitors and sensors operated as part of the Washington Network.[6] This network may be used to measure or estimate concentrations of criteria air pollutants in identified and neighboring communities.

## WAC 173-448-040 Determining air quality in identified communities.

(1) Ecology will determine the ambient air concentration of criteria air pollutants in identified communities through a statistic called a design value. Design values will be calculated with at least three years of monitoring or sensor data collected from the following sources:

   (a) Regulatory air quality monitors used for purposes of determining compliance with the National Ambient Air Quality Standards; or

   (b) Non-regulatory air quality monitors and sensors that are operated as part of the Washington air monitoring network,[7] but are not used to determine compliance with the National Ambient Air Quality Standards.

(2) Monitors and sensors in subsection (1) of this section are preferentially located within the boundary of an identified community; however Ecology may consider data from monitors and sensors outside the boundaries of an identified community that are representative of pollution concentrations in the identified community.

(3) Ecology may exclude data if it determines that elevated concentrations are caused by an exceptional event, as defined in 40 CFR Part 50.1.

(4) Design values for criteria air pollutants will be calculated using validated data beginning [Placeholder; January 1, 2020] as follows:

   (a) Follow the data completeness requirements and process for calculating design values in 40 CFR Part 50 if regulatory data are available; or

   (b) Follow an alternate process to estimate design values using non-regulatory monitor or sensor data if regulatory data are not available.

(5) If there are at least three years of data to calculate or estimate the design value of a criteria pollutant in an identified community, Ecology will:

   (a) Calculate or estimate the design value for the pollutant at each monitor or sensor that meets the criteria in subsections (1) and (2) of this section;

   (b) [Placeholder. Ecology is considering statistics such as median, third quartile or another approach to calculate a design value that is representative of the ambient air concentration of the pollutant in the identified community.]

[6] https://airqualitymap.ecology.wa.gov/

[7] https://airqualitymap.ecology.wa.gov/

(c) Publish the design values in the biennial report required under RCW 70A.65.020(2)(a), beginning with the third report that will be published by December 31, 2027.

(6) Criteria air pollutant design values in each identified community will be recalculated and published on the Ecology website every two years using the process outlined in this section and will be compared to the air quality target established under WAC 173-448-050.

(7) If there are not at least three years of data to calculate or estimate the ambient air concentration design value of a criteria pollutant in an identified community, Ecology will:

(a) Not compare that pollutant to an "Air Quality Target" established under WAC 173-448-050 until at least three years of data are available to determine the design value in the identified community;

(b) Continue to monitor and expand monitoring for criteria air pollutants according to the Ambient Air Monitoring Network Plan[8] for the purpose of meeting the requirements of RCW 70A.65.020(1)(b).

## WAC 173-448-050 Air quality targets.

(1) Ecology will set air quality targets for the criteria pollutants in identified communities that have calculated or estimated design values, as described in WAC 173-448-040.

(2) When setting an air quality target, Ecology will consider the following options and select the option determined to be the most protective of public health:

(a) The calculated or estimated design value of a criteria pollutant in the neighboring community, as defined in WAC 173-448-030, using the same methodology for calculating or estimating ambient air concentration design values, as described in WAC 173-448-040; or

(b) The National Ambient Air Quality Standards under 40 CFR Part 50.

(3) If there are not at least three years of data to calculate or estimate the ambient air concentration design value of a criteria pollutant in a neighboring community, Ecology will:

(a) Select the National Ambient Air Quality Standard as the air quality target until at least three years of data are available to determine the design value in the neighboring community;

(b) Continue to monitor and expand monitoring for criteria air pollutants according to the Ambient Air Monitoring Network Plan[9] for the purpose of meeting the requirements of RCW 70A.65.020(1)(b).

[8] https://apps.ecology.wa.gov/publications/SummaryPages/2402017.html

[9] https://apps.ecology.wa.gov/publications/SummaryPages/2402017.html

(4) After establishment of an initial air quality target, Ecology will reassess the target every [Placeholder; six years] following the identification or re-identification of overburdened communities highly impacted by air pollution and after sufficient data, as described in WAC 173-448-040(4), are available to calculate or estimate the ambient air concentration design value for a criteria pollutant in the neighboring community.

(5) Once an air quality target is established, Ecology will determine if the target is being met by comparing it to the most recent ambient air concentration design value in the identified community, as described in WAC 173-448-040(6).

(6) An air quality target is not met. If Ecology determines that validated monitoring data for an identified community confirms that an air quality target for a criteria pollutant was not met, Ecology will work with the community and partners to identify sources, as described in WAC 173-448-070, and develop emission reduction strategies, based on the needs of the specific community.

(7) An air quality target is met. If Ecology determines that validated monitoring data for an identified community confirms that an air quality target for a criteria pollutant was met, Ecology will continue to monitor air quality conditions in the identified community and compare the calculated or estimated design values in the identified community to the neighboring community, for the purposes of this section, until Ecology determines the identified community is no longer highly impacted by air pollution.

(8) All air quality targets are met. For the purposes of RCW 70A.65.020, Ecology may remove the identified community from the list of overburdened communities highly impacted by air pollution if all established air quality targets have been met for [Placeholder; time period] or if Ecology's policy for identifying overburdened communities highly impacted by air pollution no longer indicates the community is overburdened and highly impacted by air pollution.

## WAC 173-448-060 Emission reduction strategies.

(1) Emissions reduction strategy. The objective of an emission reduction strategy is to help meet the air quality target(s) established for an identified community by reducing criteria air pollution from sources identified under WAC 173-448-070. An emissions reduction strategy may include one or more of the following:

(a) Recommendation to adopt stricter air quality standards, emission standards, or emission limitations;

(b) Emission reductions for high priority emitters, as described in 173-448-100;

(c) Compliance or enforcement actions; or

(d) Other relevant programs or policies that reduce emissions outside of this chapter.

## WAC 173-448-070 Identifying sources of criteria air pollution.

(1) Greatest contributors. Ecology will determine the sources constituting the greatest contributors of criteria air pollution in each identified community with consultation from the local air authority.

(a) Ecology may use, but will not be limited to, the following sources of information to determine which sources are having a significant impact on air quality and constitute the greatest contributors within an identified community:

(i) Emissions information described in WAC 173-448-080 and any other emissions information available to Ecology;

(ii) Monitoring data from monitors and sensors that are part of the Washington air monitoring network;

(iii) Air quality models and studies conducted by Ecology, the local air authority, or regulated entity; and

(iv) Community engagement in accordance with RCW 70A.65.020(4)(a)(i).

(b) The list of sources constituting the greatest contributors for each identified community may be reassessed every [Placeholder; six years] in conjunction with the overburdened community identification process.

(2) High priority significant emitters. Ecology will determine the permitted or registered sources it considers to be high priority significant emitters in the identified community for which Ecology or the local air authority may require emissions reductions provided the criteria in WAC 173-448-100(4) are met.

(a) Ecology may use, but will not be limited to, the sources of information described in subsection (1)(a) of this section to determine a high priority emitter.

(b) Ecology will consult with the local air authority and develop a draft list of high priority emitters prior to establishing a final list of high priority emitters.

(3) A permitted or registered source in an identified community will initially be considered a high priority emitter if any of the following criteria apply:

(a) The source's annual emissions of a criteria pollutant or criteria pollutant precursor are greater than the following thresholds based on data representing the 2020 calendar year or any calendar year thereafter:

| **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 |

| Pollutant | Emission Rate |
|---|---|
| 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 |

Table 1. Emission thresholds for high priority emitter identification

(b) Other data, as described in (2) of this section, indicates that the permitted or registered source causes or contributes to criteria air pollution in the community.

(4) Once a source is determined to be a high priority emitter, Ecology will notify the source and provide the data used to make the determination.

(5) A source determined to be a high priority emitter has 60 days after receipt of the notification to submit to Ecology more recent data or other information relevant to the high priority emitter designation for reconsideration unless a different schedule is requested and agreed to by Ecology.

(6) Ecology may remove a source from the list of high priority emitters at any time if Ecology determines that subsequent data demonstrates that the source:

(a) Has annual emissions lower than the thresholds described in subsection (3)(a) of this section for the most recent five years of data; and

(b) Does not otherwise cause or contribute to criteria air pollution in the community.

(7) The list of high priority emitters for each identified community will be published on Ecology's website and reassessed every [Placeholder; time interval].

(8) A list of all sources identified under this section for each identified community will be posted on Ecology's website within 30 days of Ecology's approval of the final lists.

## WAC 173-448-080 Emission submittal requirements.

(1) Emission Monitoring Plan. Within one year of being notified of the high priority emitter designation, a high priority emitter must submit an emission monitoring plan to Ecology and the local air authority. This plan must include a description of how emissions of criteria pollutants and criteria pollutant precursors are monitored and calculated at the facility. The plan may refer to other documents that describe this information. Ecology may use the emission monitoring plan when establishing emission baselines under WAC 173-448-090.

(2) Upon request by Ecology, the owner or operator of a source identified as a high priority emitter must submit an inventory of its stack and fugitive emissions. The records required

under this subsection must be submitted within 30 days of receipt of the notification, unless a different schedule is requested by the owner or operator and agreed to by Ecology.

(3) Upon request by Ecology, the owner or operator must report daily or monthly emissions of criteria pollutants and criteria pollutant precursors. Daily and monthly emissions may be calculated using best available data where emissions are not continuously monitored. The records required under this subsection must be submitted within 30 days of receipt of the notification, unless a different schedule is requested by the owner or operator and agreed to by Ecology.

(4) The inventory must be submitted electronically in a format specified by Ecology.

## WAC 173-448-090 Emission baselines.

(1) Establishing criteria pollutant emission baselines. Ecology must calculate a baseline of emissions for each criteria pollutant, and associated criteria pollutant precursors, whose air quality target has not been met. Emission baselines may be calculated using information from the emission monitoring plan described in WAC 173-448-080(1) and other emissions data reported to Ecology, the local air authority, or EPA.

(2) For high priority emitters in communities identified in 2023, the emission baselines must be the [Placeholder. Ecology is considering one of the following options: 1) average of the combined emissions of criteria air pollutant and its precursors from 2013 to 2022; 2) highest two-year average of the combined emissions of criteria air pollutant and its precursors from 2018 to 2022; or 3) average of the combined emissions of criteria pollutant and its precursors from any year 2018 through 2022].

   (a) For communities identified after 2023, the baseline will be the [insert option from above] from the [X years] prior to identification.

   (b) Ecology may also calculate baselines for the highest seasonal, monthly, or daily emissions from [X years] prior to identification of the community.

   (c) Ecology must notify the high priority emitter of each criteria pollutant emission baseline established. If additional information is provided under (d) of this subsection, Ecology will indicate whether the additional information is used in the baseline calculation.

   (d) A high priority emitter may submit updated or more accurate emissions information to Ecology within 60 days of notification of the baseline for Ecology's consideration unless a different schedule is requested and agreed to by Ecology.

## WAC 173-448-100 Emission reductions for high priority emitters.

(1) Optional Emission Reduction Plan. Within [Placeholder; one year] of being notified of the high priority emitter designation, a high priority emitter may choose to submit an optional Emission Reduction Plan to Ecology and the local air authority. The optional Emission Reduction Plan must include:

(a) A description of current emissions controls, including when they were installed and an estimate of removal efficiency;

(b) A list of potential and proposed actions to reduce criteria pollutant or criteria pollutant precursor emissions. Actions to reduce emissions may include but are not limited to:

i. Installing new control equipment;

ii. Optimizing current control equipment;

iii. Operational or process changes;

iv. Alternative mitigation actions that reduce criteria pollutants within the identified community by a similar amount.

(c) Actions proposed in the optional Emission Reduction Plan described in subsection (1) of this section must include:

i. An evaluation of the technical and economic feasibility of the actions listed;

ii. A timeline for implementing feasible actions;

iii. A description of how the chosen actions are verifiable; and

iv. A method for monitoring and maintaining compliance to ensure emissions reductions are sustained.

(2) Ecology will review and either approve the optional Emission Reduction Plan or request changes to the plan. [Placeholder; Ecology is considering the approval process and review period]

(3) A source that operates in accordance with an approved optional Emission Reduction Plan under this section will not be subject to enforcement actions under WAC 173-448-100(10) provided the emission reductions in the approved plan are achieved and maintained.

(4) Beginning in 2030 and every six years thereafter, Ecology or the local air authority must establish a stricter emission limit or emission limits and issue an enforceable order under its authority in RCW 70A.15.3000 to a high priority emitter when all of the following conditions are met:

(a) The air quality target for the identified community which the high priority emitter is impacting has not been met;

(b) Ecology determines that criteria pollutants are not being sufficiently reduced within an overburdened community as informed by the two-year reports required under RCW70.A.65.020(2)(a);

(c) The high priority emitter does not have, or is not operating in accordance with an approved optional Emission Reduction Plan to achieve and maintain emission reductions, as described in WAC 173-448-100(1); and

(d) Ecology, in consultation with the local air authority, determines the emissions from the high priority emitter are not decreasing, according to the emission baseline table below, using the most recent two years of reported emissions. Ecology may consider additional emissions information relevant to a high priority emitter's emissions or impact when determining if emissions are not decreasing, including emissions reductions from alternative mitigation actions.

(i) For the purposes of this section, a sufficient decrease in emissions by a high priority emitter means the applicable criteria pollutant and criteria pollutant precursors are the following percents below the emission baseline established in WAC 173-448-090:

| **Year of Evaluation** | **Percent Below Baseline** |
|---|---|
| 2030 | 3% |
| 2036 | 6% |
| 2042 | [Placeholder; 9%, please provide comment] |
| 2048 and after | [Placeholder; 12%, please provide comment] |

Table 2. Reductions below emission baselines for high priority emitters

(5) If the conditions in (4)(a) through (d) of this section are met, Ecology will notify the high priority emitter that an enforceable order to reduce emissions will be issued.

(6) Required Emission Reduction Plan. Within one year of notification under (5) of this section, a high priority emitter must submit a required Emission Reduction Plan to Ecology. The required Emission Reduction Plan must include the following:

(a) A third-party assessment of current emission controls and operations. This assessment must be stamped by a professional engineer licensed in Washington state and may include:

(i) Evaluation of the current treatment efficiency vs the design removal efficiency of equipment;

(ii) Assessment of any operational deficiencies or problems;

(iii) Assessment of whether changes in operations/maintenance could improve the treatment efficiency (i.e. increasing scrubber flow in a scrubber, etc.);

(iv) Estimation of remaining useful life;

(v) Evaluation of whether a facility could make upgrades to existing equipment to make it more efficient.

(b) A description of current emissions controls, including when they were installed and an estimate of removal efficiency;

(c) A list of potential and proposed actions to reduce criteria pollutant or criteria pollutant precursor emissions within the next six years. Actions to reduce emissions may include but are not limited to:

(i) Installing new control equipment;

(ii) Optimizing current control equipment;

(iii) Operational or process changes;

(iv) Alternative mitigation actions that reduce criteria pollutants within the identified community by a similar amount.

(d) Actions proposed in the required Emission Reduction Plan described in subsection (6) of this section must include:

(i) An evaluation of the technical and economic feasibility of the actions listed;

(ii) A timeline for implementing feasible actions;

(iii) A description of how the chosen actions are verifiable; and

(iv) A method for monitoring and maintaining compliance to ensure emissions reductions are sustained.

(7) Ecology, in consultation with the local air authority, will review the required emission reduction plan described in subsection (6) of this section and either approve the plan or require changes. If changes are required, Ecology or the local air authority will notify the source and provide at least 30 days to submit revisions, unless a different schedule is requested and agreed to by Ecology.

(8) Ecology may use information from the Emission Reduction Plan or other relevant sources to establish emission limits. Ecology, in consultation with the local air authority, must adopt a stricter emission limit or limits, including monitoring or compliance assessments as needed, for the high priority emitter notified in (5) to ensure emissions reductions are achieved and sustained in the air permit of a high priority emitter.

(9) Ecology or a local air authority must issue an enforceable order to a high priority emitter within six months of adopting a stricter emission limit or limits. The order must include the emission limit or limits and may contain other monitoring, reporting, recordkeeping, compliance assessments, or other requirements as necessary.

(10) Orders to reduce emissions become part of a high priority emitter's requirements.

(11) Appeals. A high priority emitter may appeal the enforceable order to the Pollution Control Hearings Board through the process established in Chapter 43.21B RCW and Chapter 371-08 WAC.

## WAC 173-448-110 Requirements for emissions-intensive, trade-exposed industries and new sources.

(1) The owner or operator of a facility sited after July 25, 2021, that is eligible to receive allowances under RCW 70A.65.110 must mitigate increases in particulate matter in identified communities due to its emissions.

(2) A new source or modification with the potential to emit beyond the significant emissions thresholds in WAC 173-448-070(3)(a), must mitigate increases in particulate matter in identified communities due to its emissions. Within [Placeholder; one year] after notification, the facility must submit a plan to Ecology to mitigate increases in particulate matter in an identified community. At a minimum, the plan must include:

    (a) An estimate of increases in particulate matter in the community due to its actual or projected actual emissions;

    (b) Proposed actions to mitigate the increases in particulate matter. Actions must result in measurable reductions in criteria pollution.

(3) Ecology must review and approve the plan submitted under (2) of this section or request changes to the plan. If changes are required, Ecology will notify the source and provide at least 30 days to submit revisions, unless a different schedule is requested and agreed to by Ecology.

## WAC 173-448-120 Enforcement.

Any violation of this chapter is a violation of chapter **70A.15** RCW and subject to enforcement as provided in that chapter.

## WAC 173-448-130 Severability.

The provisions of this regulation are severable. If any provision of this chapter or its application is held invalid, the application of that provision to other circumstances and the remainder of the regulation will not be affected.