in the context of an enforcement action, when such excess emissions are unavoidable and could therefore be excused and not subject to penalty. The section sets forth separate criteria for periods of excess emissions resulting from startup or shutdown, scheduled maintenance, and upsets. EPA finds this section to be consistent with its requirements for SIP excess emissions rules (February 15, 1983 memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators, Regions 1–X) and therefore proposes to approve it as a revision to the Washington SIP. Note that this new section replaces the provisions for excess emissions which were formerly contained in WAC 173-400-105(5) and EPA also proposes to approve the repeal of those provisions.

4. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173–400–091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. Such limitations would be contained in a "regulatory order" issued by the WDOE or a local air authority, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with the limitations.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of Federally enforceable State operating permits. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. The EPA has encouraged States to develop such programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, "Limitation of Potential to Emit With Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S.

Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of hazardous air pollutants (HAP) if the program were approved pursuant to section 112(l) of the Act.

The June 28, 1989 Federal Register notice establishes five criteria which must be met in order for EPA to approve a State operating permit program into the SIP: (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) any permit issued under the program must contain terms and conditions that are at least a stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) any permit issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) any permit that is intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis

EPA finds that WAC 173-400-091 meets the requirements for Federally enforceable State operating permit programs as set forth in the June 28. 1989 **Federal Register** (54 FR 27274) and proposes to approve it as a revision to the Washington SIP. Furthermore, EPA proposes that, after final approval to this section, "regulatory orders" issued pursuant to the EPA-approved WAC 173-400-091, and terms and conditions contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to have been issued after the effective date of WAC 173-400-091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that section. Sources could, thereafter, rely on "regulatory orders" issued pursuant to this section as a means to limit their potential to emit criteria pollutants and the pollutants regulated under the PSD provisions of the SIP in order to avoid requirements which would otherwise apply to "major stationary sources." EPA requests comment on the appropriateness of making Federally enforceable, as of the date of EPA approval, the terms and conditions of an order that was issued prior to EPA's approval of a State or local rule, provided the order itself complied with all of the requirements of the EPA-approved rule.

5. Miscellaneous Changes

The remaining changes to WAC 173–400–030 "Definitions;" and the changes to WAC 173–400–040 "General standards for maximum emissions;" WAC 173–400–100 "Registration;" WAC 173–400–105 "Records, monitoring, and reporting;" WAC 173–400–171 "Public involvement;" "WAC 173–400–230 "Regulatory actions;" and WAC 173–400–250 "Appeals" are primarily administrative in nature to conform those sections to current State statutes and to other provisions of WAC 173–400. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as revised.

C. Discussion of Proposed Disapprovals

On January 15, 1993 (58 FR 4578), EPA disapproved numerous provisions of Chapter 173–400 WAC. These provisions were resubmitted as part of the March 8, 1994 submittal without the necessary changes to make them approvable. EPA is therefore proposing to again disapprove the following provisions. A complete discussion of the deficiencies and the reasons for disapproval can be found in the September 28, 1992 Notice of Proposed Rulemaking (57 FR 44530).

EPA is proposing to disapprove WAC 173-400-040(1) (c) and (d) which allow for the establishment of alternative opacity limits. EPA is proposing to disapprove the second paragraph of WAC 173-400-040(6) which provides an exception to the sulfur dioxide emission limitation. EPA is proposing to disapprove the exception provision in WAC 173-400-050(3) which allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources. EPA is proposing to disapprove WAC 173-400-180 Variance which allows the WDOE to grant a variance to the requirements governing the quality, nature, duration, or extent of discharges of air contaminants. EPA is proposing to disapprove WAC 173-400-120 Bubble Rules, WAC 173-400-131 Issuance of Emission Reduction Credits, and WAC 173-400-136 Use of Emission Reduction Credits as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4,

EPA is proposing to disapprove WAC 173–400–141 Prevention of Significant Deterioration (PSD) as it does not meet