



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: July 30, 2019

TIME: 3:10 PM

WSR 19-16-063

Agency: Department of Ecology AO # 19-02

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-11-032 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

The Department of Ecology (Ecology) proposes to amend multiple sections of Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. This rulemaking would amend:

- The numeric criteria for total dissolved gas in the Snake and Columbia rivers:
 - WAC 173-201A-200(1)(f)(ii)
- Specific sections of the rule to meet legal obligations in a 2018 Stipulated Order of Dismissal (see discussion below):
 - WAC 173-201A-200(1)(c)(ii)(B)
 - WAC 173-201A-210(1)(c)(ii)(B)
 - WAC 173-201A-240(5) Table 240 footnote dd
- The descriptions of marine water aquatic life use designations:
 - WAC 173-201A-210(1)(a)
 - WAC 173-201A-610 Table 610

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-revisions>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Sept. 16, 2019	1:30p.m.	In-person at: WA State School for the Blind Fries Auditorium (Old Main Bldg) 2214 East 13th Street Vancouver, WA 98661	We are holding this hearing in-person only. The hearing will begin with a short presentation followed by a question and answer (Q&A) session. Testimony will start after the Q&A session. The hearing will conclude once all interested persons who want to provide formal testimony.
Sept. 19, 2019	1:30pm	Webinar Only	We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. The hearing will begin with a short presentation followed by a question and answer (Q&A) session. Oral testimony will start after the Q&A session. The hearing will conclude once all interested persons who want to provide formal testimony. Join online and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=e4de76ff8a5a7a032f96cad3280bcd7d1

Date of intended adoption: December 11, 2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Susan Braley

Address: Send via US mail at:

[Department of Ecology

[Water Quality Program]

PO Box 47600, Olympia, WA 98504-7600 (US mail).

Email: Submit comments by US mail, online, or at the hearing(s).

Fax: N/A

Other: Online: <http://ws.ecology.commentinput.com/?id=EHijZ>

By (date) September 26, 2019

Assistance for persons with disabilities:

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

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

Email: ecyADAcoordinator@ecy.wa.gov

Other: N/A

By (date) September 12, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

We are proposing to amend Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington (SWQS), including: (Revision A) modifying TDG Criteria, (Revision B) meeting legal obligations, and (Revision D) clarifying descriptions of marine aquatic life use designations. Revision C (aligning shellfish criteria), which was previously included in the announcement phase of this rulemaking, is not included in this proposed rule. After further consultation with the Washington State Department of Health, Ecology decided not to move forward with Revision C at this time. Ecology learned that the alignment of this rule with the state and federal shellfish program procedures will require more research and time than was available for this rulemaking. Proposed amendments for this rulemaking include:

(Revision A) Amending the numeric criteria for total dissolved gas (TDG) in the Snake and Columbia Rivers at WAC 173-201A-200(1)(f)(ii)

The goal of this rule proposal is to improve fish passage for salmon and steelhead migrating downstream in the Snake and Columbia rivers. Dams release water through spillways over the dam and fish using the spillway have a better chance for survival compared to those that pass through the dams' turbines. However, spilling water also increases TDG that can negatively impact aquatic life. This rule proposal would amend the TDG limit to allow for greater water flow through spillways for improved salmon migration, while ensuring that TDG limits minimize negative impacts to aquatic life through sufficient biological monitoring.

These amendments would:

- Provide a new adjusted TDG criteria that may be applied at dams that operate increased spills for the purpose of improving downstream juvenile salmon and steelhead migration in the Snake and Columbia rivers.
- Establish biological thresholds that must be met to apply an adjusted criteria up to 125% TDG.

(Revision B) Meeting obligations made in a 2018 U.S. District Court Stipulated Order of Dismissal between NWEA, EPA, and Ecology

We are proposing to amend sections of the SWQS as agreed to in a 2018 U.S. District Court Stipulated Order of Dismissal (Order) between Northwest Environmental Advocates (NWEA), the U.S. Environmental Protection Agency (EPA), and the Department of Ecology (Ecology). In the Order, Ecology agreed to take action on several sections of the SWQS by October 2021, including:

- i. The removal of two sub-sections in the fresh and marine water temperature criteria relating to an incremental temperature allowance from nonpoint source activities when the water is cooler than the assigned numeric criterion (WAC 173-201A-200(1)(c)(ii)(B) and WAC 173-201A-210(1)(c)(ii)(B)).
 - Although these provisions for nonpoint temperature increases have been in the standards for decades, they have not been applied in Ecology's nonpoint protection program. The provisions may also conflict with our current antidegradation requirements that already prescribe a different temperature allowance when water is cooler than the assigned numeric criterion. For these reasons, Ecology agreed to remove these sub-sections of temperature criteria and is including the revision in this rulemaking to be compliant with the Order.
- ii. An amendment to footnote 'dd' in WAC 173-201A-240(5), Table 240 to clarify that an adjustment of metals criteria (Water Effects Ratio) pursuant to this footnote requires EPA approval pursuant to 33 U.S.C. § 1313(c).

- Ecology agreed to amend the footnote in Table 240 to clarify that adjustments to metals criteria requires EPA approval. The EPA previously indicated to Ecology that any efforts to revise metals criteria by developing water effects ratios would need to go through a separate rulemaking, which Ecology agreed to. This amendment would codify the agreed-upon intent of this footnote and would not change how the footnote is currently implemented.

(Revision D) Clarifying the descriptions of marine water aquatic life use designations

We are proposing amendments to the aquatic life use designation descriptions for marine waters (WAC 173-201A-210(1)(a) and WAC 173-201A-610 Table 610). In a 2003 rulemaking to update the SWQS, the restructuring of aquatic life use designations descriptions resulted in an unintentional change that applied these use designations to cold water fisheries. This error was recently discovered when the City of Everett petitioned Ecology to revise dissolved oxygen criteria for marine waters. The city pointed out the discrepancies in the marine use designation descriptions, and upon review, Ecology agreed that this was an unintended error and that the agency would correct in a future rulemaking. The proposed amendments would return the descriptions to their original intent and improve the ability for the public to apply the SWQS appropriately.

Reasons supporting proposal: See answer to "Purpose of the proposal."

Statutory authority for adoption: RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS). Additionally, 40 CFR 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS..

Statute being implemented: Chapter 90.48 RCW - Water Pollution Control

Is rule necessary because of a:

- | | | |
|-------------------------|---|--|
| Federal Law? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION: FEDERAL WATER POLLUTION CONTROL ACT - 33 U.S.C. 1251 et seq and 40 CFR Part 131 - WATER QUALITY STANDARDS

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Department of Ecology Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Bryson Finch	Headquarters - Lacey	(360) 407-7158
Implementation:	Chad Brown	Headquarters - Lacey	(360) 407-6128
Enforcement:	Heather Bartlett	Headquarters - Lacey	(360) 407-6405

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name: N/A
- Address: N/A
- Phone: N/A
- Fax: N/A
- TTY: N/A

Email: N/A

Other: N/A

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Susan Braley

Address: Department of Ecology
Water Quality Program
PO Box 47600
Lacey, WA 98504-7600

Phone: 360-407-6414

Fax: N/A

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

Email: swqs@ecy.wa.gov

Other: <https://fortress.wa.gov/ecy/publications/SummaryPages/1910031.html>

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

Ecology has analyzed the compliance costs of this rulemaking in our Preliminary Regulatory Analyses document (<https://fortress.wa.gov/ecy/publications/SummaryPages/1910031.html>). Based on this analysis Ecology has determined the proposed amendments do not impose compliance costs on private businesses. Parties regulated by the amendments are all government and publicly owned entities.

Therefore, Ecology is not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Susan Braley

Address: Department of Ecology
Water Quality Program
PO Box 47600
Lacey, WA 98504-7600

Phone: (360) 407-6414

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>.

Email: swqs@ecy.wa.gov

Other:

Date: July 30, 2019

Name: Polly Zehm

Title: Deputy Director

Signature:

