



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Ecology AO # 15-07

Subject of possible rule making:

Ecology proposes to amend two rules:

- General Regulations for Air Pollution Sources - Chapter 173-400 WAC - establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting federal air quality standards.
- Operating Permit Regulation - Chapter 173-401 WAC - establishes a permit program that consolidates all air quality requirements for large industries in a single permit.

See Attachment A.

Statutes authorizing the agency to adopt rules on this subject:

Chapter 70.94 RCW, RCW 70.94.011, RCW 70.94.161, RCW 70.94.331, RCW 70.94.431

Reasons why rules on this subject may be needed and what they might accomplish: See Attachment B.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Ecology will communicate with, and seek input from, the following agencies throughout the rulemaking process:

- The federal Environmental Protection Agency (EPA) to ensure compliance with EPA's decision published on May 22, 2015 (80 FR 33839)
- Energy Facility Site Evaluation Council (EFSEC)
- Local clean air agencies, in particular the Southwest Clean Air Agency

The EPA decision also affects the Southwest Clean Air Agency and the Energy Facility Site Evaluation Council. They must change their rules based on our new rules and send their State Implementation Plan or SIP revision to EPA, which we will submit on their behalf. Neither agency can proceed with rulemaking until Ecology has finished this rule amendment.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

We develop rules with input from the public. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

1. Visit the Air Quality Program web page at: <http://www.ecy.wa.gov/programs/air/rules/rulemaking.html>
2. Sign up to receive e-mail notices at: <http://listserv.wa.gov/cgi-bin/wa?SUBED1=ECY-AQ-RULE-AND-SIP-UPDATES&A=1>
3. Participate in a stakeholder meeting and/or a public hearing. For details, visit the Air Quality Program's web page at <http://www.ecy.wa.gov/programs/air/rules/wac173400/1507ov.htm>.
4. Contact: Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6855 or elena.guilfoil@ecy.wa.gov

DATE
December 16, 2016

NAME (TYPE OR PRINT)
Stuart A. Clark

SIGNATURE

TITLE
Air Quality Program Manager

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STATE OF WASHINGTON
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Department of Ecology
AO # 15-07
Preproposal Statement of Inquiry

Attachment A – Subject of possible rulemaking

The changes focus on the General Regulations for Air Pollution Sources, Operating Permit Regulation and revising the State Implementation Plan (SIP). Because of court rulings, EPA told Ecology (and 44 other state and local jurisdictions) to change their current rules (a SIP Call). Under existing rules, facilities are allowed extra emissions during periods of startup, shutdown, and malfunction (SSM). EPA says industry must have emission limits during SSM.

Changes will:

- Remove or revise exceptions for emissions during startup, shutdown, and malfunction to comply with EPA's decision. This includes provisions such as affirmative defense, director's discretion and automatic exemption.
- Allow public notices to be posted on an agency website instead of exclusively requiring newspaper notice
- Simplify application of nonroad engine requirements
- Update federal rule language in our rules and include the definition of volatile organic compounds (VOC)
- Correct errors
- Make the rules easier to understand

Attachment B – Reasons why rules on this subject may be needed and what they might accomplish

EPA Determinations

- State Implementation Plan (SIP) Deficiency
We are doing this rulemaking because EPA determined that rules in Washington are inadequate to meet Clean Air Act requirements. Our existing rules exempt excess emissions during periods of startup, shutdown and malfunction from emission limits or allow a company to avoid an enforcement action for these emissions. EPA interprets our rule as limiting the scope of EPA and citizens in enforcement actions they may pursue in the federal courts.

EPA directs states, including Washington, to correct their rule deficiencies and submit them into the SIP by November 22, 2016. Ecology will not meet this deadline. We anticipate completing rulemaking and submitting a revised SIP to EPA during the summer 2017.

- Title V – Operating Permit Program
EPA extended the rationale for the SIP deficiency to the Title V program and proposed to remove affirmative defense provisions that shield a source from an enforcement action. Consequently, we have expanded our rulemaking to amend WAC 173-401-645.
- Public Notice
EPA expanded the requirement to provide public notice of a draft Prevention of Significant Deterioration and an air operating permit. Previously, notice was required in a newspaper and documents must have been available at a physical location. Now, an agency can choose to post notice and documents on their website. Electronic public notice enables us to communicate to the public more quickly.

Nonroad Engines

Ecology received requests to revise this provision to address trivial-scale nonroad engines and other adjustments to simplify application of the requirements.