



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: November 07, 2018

TIME: 7:21 AM

WSR 18-22-124

Agency: Department of Ecology AO # 18-03

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-13-113 ; 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)

Chapter 173-405 WAC, Kraft Pulping Mills, regulates air pollution from mills that use the kraft process to produce paper pulp or paper from wood fibers.

Chapter 173-410 WAC, Sulfite Pulping Mills, regulates air pollution from mills that use a cooking liquor consisting of sulfurous acid, a sulfite or bisulfite salt alone or in any combination, with or without additional mechanical refining or delignification to produce pulp, pulp products, or cellulose from wood fibers.

Chapter 173-415 WAC, Primary Aluminum Plants, regulates air pollution from primary aluminum reduction plants that manufacture aluminum by electrolytic reduction.

These three rules are enacted under RCW 70.94.395 to set statewide air quality requirements and standards for kraft pulping mills, sulfite pulping mills and primary aluminum plants

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-------------------|-----------|--|--|
| December 12, 2018 | 2:30 p.m. | Webinar and in-person at: Department of Ecology, 300 Desmond Drive SE, Lacey WA 98503 | <p>Presentation, question and answer session followed by the hearing.</p> <p>We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions: https://watech.webex.com/watech/onstage/g.php?MTI=D=efdf8ba90c1780c04f6b026956bcfcc62</p> <p>For audio call US Toll number 1-855-929-3239 and enter access code 808 604 799. Or to receive a free call back, provide your phone number when you join the event.</p> |

Date of intended adoption: 4/3/2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Debebe Dererie

Address: Department of Ecology
Air Quality Program
P.O. Box 47600,
Olympia, WA 98504-7600

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

Fax: N/A

Other: Submit comments online at: <http://ac.ecology.commentinput.com/?id=35Zx2>

By (date) 12/20/2019

Assistance for persons with disabilities:

Contact Sultana Shah

Phone: 360-407-6831

Fax: N/A

TTY: 711, for deaf or hard of hearing: 877-833-6341 (Washington Relay Service)

Email: sultana.shah@ecy.wa.gov.

Other: N/A

By (date) 12/7/2018

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

We are proposing sets of changes in this rulemaking:

1. The primary purpose of this rulemaking is to align the following statewide rules with the General Regulations for Air Pollution Sources (Chapter 173-400 WAC), the federal Clean Air Act (CAA), and the Environmental Protection Agency (EPA) startup, shutdown and malfunction (SSM) policy:
 - Chapter 173-405 WAC - Kraft Pulping Mills,
 - Chapter 173-410 WAC - Sulfite Pulping Mills, and
 - Chapter 173-415 WAC - Primary Aluminum Plants.

The CAA and EPA SSM policy require emission standards to apply continuously without automatic or discretionary exemptions, even during periods of SSM. Contrary to the CAA requirements and EPA SSM policy (80 F.R. 33840), Chapter 173-400 WAC exempted or allowed a source to avoid an enforcement action for exceedances of emission standards during periods of startup, shutdown, and scheduled maintenance. EPA determined WAC 173-400-107 had overly broad enforcement discretion that potentially bars enforcement action by EPA and citizens in federal courts (80 F.R. 33840). On August 16, 2018, Ecology adopted amendments to Chapter 173-400 WAC to correct EPA-identified deficiencies, and meet the CAA requirements and SSM policy that allow comprehensive enforcement of applicable requirements.

This rulemaking harmonizes Chapters 173-405, 173-410 and 173-415 WAC with Chapter 173-400 WAC through adoption by reference of the SSM related provisions to:

- Remove impermissible provisions that shield sources from civil penalties for excess emissions during startup, shutdown, and scheduled maintenance.
- Establish alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of hog-fuel boilers with dry particulate controls.
- Outline the process for establishing facility-specific alternative emission limits for specific short-term operation modes like SSM that exceed the otherwise applicable emission standards in the SIP.
- Simplify the excess emission notification and reporting requirements.

We are proposing these changes to allow facilities subject to Chapters 173-405, 410 and 415 WAC rules to:

- Have clear and consistent regulatory requirements across air quality rules that meet the federal requirements for SSM.
- Use the alternative emission standards for soot-blowing and grate cleaning, refractory curing, and startup and shutdown of wood-fired and hog-fuel boilers with dry particulate controls.
- Have a pathway to get an Ecology approved source-specific alternative emission limit for specific short-term operations, when a source demonstrates it is technically infeasible to comply with the otherwise applicable emission standard.
- Simplify excess emissions notification and reporting requirements.

2. Other changes include:

- Explicitly require monthly performance tests for secondary emissions of total fluoride from primary aluminum plants, while providing a procedure that allows reduction of the performance testing frequency to quarterly.
- Extend the time allowed for submission of source testing reports to 60 days instead of 15 days for pulping mills and 30 days for primary aluminum plants, to address the historical compliance challenge.
- Delete provisions that are outdated and not applicable to facilities covered by these rules.
- Correct typos and citations, and clarify rule language without changing the intent of the rules.

We are proposing these changes to:

- Protect human health and the environment through early identification of excess emissions of fluorides by maintaining the monthly total fluoride performance testing frequency for the secondary emission control systems of primary aluminum plants. In 2015, the federal equivalent requirement was changed to semi-annual performance testing. However, the aluminum plants have shown some history of exceedances of the secondary total fluoride emission standard. Thus, we are maintaining the monthly testing frequency to avoid undetected exceedances of the emission standard.
- Provide a primary aluminum plant opportunity to reduce the performance testing frequency for the total fluoride from secondary emission control systems, if the plant consistently demonstrates emissions well below the emission standard.
- Promote compliance by extending the deadline for performance testing report submissions to reflect the time it takes to develop and to perform quality assurance on the report. This helps facilities avoid late reporting.
- To improve the readability of the rule and update references.

Reasons supporting proposal:

Please see **“Purpose of the proposal and its anticipated effects, including any changes in existing rules”**

Statutory authority for adoption: Chapter 70.94 RCW, RCW 70.94.152, RCW 70.94.331, RCW 70.94.395

Statute being implemented: Chapter 70.94 RCW

Is rule necessary because of a:

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

If yes, CITATION:

- Federal Clean Air Act, 42 U.S.C. Section 7401 et. seq. (1970);
- 80 Federal Register 33840 EPA SSM SIP Call;
- *Natural Resources Defense Council v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014);
- *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008);
- *Settlement agreement for Sierra Club et al. v. Jackson*, No.3:10-cv-04060-CRB (N.D. Cal.)

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: | Debebe Dererie | Lacey | 360-407-7558 |
| Implementation: | James DeMay | Lacey | 360-407-6868 |
| Enforcement: | James DeMay | Lacey | 360-407-6868 |

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: Debebe Dererie
Address: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600
Phone: 360-407-7558
Fax: N/A
TTY: (877) 833-6341
Email: debebe.dererie@ecy.wa.gov
Other: N/A

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:

| | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language) | <input type="checkbox"/> 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 19.85.025(4).

Explanation of exemptions, if necessary:

Ecology analyzed the compliance costs of the proposed amendments in Chapter 3 of the Preliminary Regulatory Analyses. We determined that no Small Business Economic Impact Statement is required under the Regulatory Fairness Act (RFA; chapter 19.85 RCW) for the proposed amendments.

Based on our employment research, none of the ten existing facilities (nine currently operating), covered by the proposed amendments, are small businesses as defined in the RFA. (Washington State Employment Security Department (2018); Websites for facility ownership at highest owner/operator level (see References list in Preliminary Regulatory Analyses)). Consequently, Ecology is not required to prepare a Small Business Economic Impact Statement under the RFA (RCW 19.85.025(4)).

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. _____
- 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:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: November 6, 2018

Name: Polly Zehm

Title: Deputy Director

Signature:

