



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 # 16-12

Subject of possible rule making:

The Department of Ecology (Ecology) plans to amend Chapter 173-407 WAC – Carbon Dioxide Mitigation Program, Greenhouse Gases Emissions Performance Standard and Sequestration Plans and Programs for Thermal Electric Generating Facilities. This rule requires power plants and units to:

- Reduce carbon dioxide emissions (CO₂ mitigation).
- Meet the greenhouse gas emissions performance standard.
- Develop plans or programs to reduce greenhouse gases as approved by Ecology.

This rulemaking only applies to new power plants, existing power plants that change ownership or undergo modification to increase power output, and power plants making new long-term financial commitments (power purchase agreements and plant purchases).

Statutes authorizing the agency to adopt rules on this subject:

Chapters 80.70 and 80.80 RCW

Reasons why rules on this subject may be needed and what they might accomplish:

Ecology is proposing to amend Chapter 173-407 WAC for the following reasons:

- As directed by RCW 80.80.050, the Department of Commerce revised the greenhouse gas emissions performance standard in WAC 194-26-020. We are proposing to adopt the revised standard. This meets the intent of the state law to periodically update the standard if necessary. These changes will also simplify future updates to the standard.
- To evaluate emission testing requirements.
- To reflect updates to Chapter 80.70 RCW Carbon Dioxide Mitigation and Chapter 80.80 RCW Greenhouse Gas Emissions – Baseload Electric Generation Facilities so that this rule would align with these laws.
- To make technical clarifications, correct errors, and improve readability.

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

See Attachment A.

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

- Negotiated rule making
- Pilot rule making
- Agency study

Other: 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:

Interested parties can stay informed about the rulemaking and public involvement opportunities as described below:

- Visit the agency web page at: <http://www.ecy.wa.gov/programs/air/rules/rulemaking.html>
- Sign up to receive e-mail notices at: <http://listserv.wa.gov/cgi-bin/wa?SUBED1=ECY-AQ-RULE-AND-SIP-UPDATES&A=1>
- Participate in a stakeholder meeting and/or a public hearing by going to <http://www.ecy.wa.gov/programs/air/rules/rulemaking.html> or <https://fortress.wa.gov/ecy/publiccalendar/>
- Contact the rulemaking lead:
Caroline (Ying) Sun caroline.sun@ecy.wa.gov 360-407-7528
Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600

Ecology will also extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

DATE
February 7, 2017

NAME
Stuart A. Clark

SIGNATURE

TITLE
Air Quality Program Manager

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 07, 2017
TIME: 3:40 PM

WSR 17-05-029

Attachment A

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

RCW 80.80.040 and 050 allow Ecology to differ from federal standards. Chapter 80.70 RCW sets up a state program with no federal counterpart.

- Energy Facility Site Evaluation Council (EFSEC) has authority to implement both Chapters 80.70 and 80.80 RCW for facilities under their jurisdiction.
- Local Clean Air Agencies have authority to implement the Chapter 80.70 RCW provisions for power plants under their jurisdiction. To see a list visit: <http://www.ecy.wa.gov/programs/air/local.html>.
- Utility and Transportation Commission (UTC) has authority to implement Chapter 80.80 RCW for investor owned utilities under their jurisdiction.
- Consumer owned electric utilities have authority to comply with the Chapter 80.80 RCW requirements for power plants and power purchase agreements.
- Department of Commerce has authority under Chapter 80.80 RCW to conduct a survey and adopt the average available greenhouse gas emissions output, new greenhouse gas emissions performance standard, every five years.
- Environmental Protection Agency (EPA) has authority to regulate this subject under its own rules (40 CFR Part 60, Subpart TTTT and UUUU). Most of the carbon dioxide emission standards under these federal rules are less stringent than the 2013 greenhouse gas emissions performance standard adopted by Commerce. One possible exception is that Washington needs to develop a plan to implement the more restrictive requirements under Subpart UUUU of the federal rules. However, the U. S. Supreme Court stayed the requirement to develop this plan until the completion of litigation. Therefore, this plan has not been developed. In the future, the more restrictive standard could apply.

Ecology Air Quality Program will notify these agencies to offer them opportunities to participate in the stakeholder meetings.