



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Ecology AO#16-01

<input type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR _____ ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____ ; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input checked="" type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

**Title of rule and other identifying information:**

- Chapter 173-400 WAC, General Regulations for Air Pollution Sources, establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting the federal air quality standards.
- Chapter 173-423 WAC, Low Emission Vehicles, establishes rules implementing the California motor vehicle emission standards adopted by the 2005 legislature.
- Chapter 173-476 WAC, Ambient Air Quality Standards, establishes emission standards for the six federal criteria pollutants: carbon monoxide, hydrocarbons, lead, ozone, small and large particles, and sulfur dioxide.

**Hearing location:** See attachment B.

**Submit written comments to:**

Name: Elena Guilfoil  
 Address: Department of Ecology  
 Air Quality Program  
 PO Box 47600  
 Olympia, WA 98504-7600  
 e-mail [AQComments@ecy.wa.gov](mailto:AQComments@ecy.wa.gov)

fax (360) 407-7534 by (date) April 12, 2016

Date: April 5, 2016 Time: 2:00 p.m. See attachment

**Assistance for persons with disabilities:** Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

**Date of intended adoption:** on or after April 20, 2016  
(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** See attachment A.

**Reasons supporting proposal:** See attachment A.

**Statutory authority for adoption:**  
Chapter 173-423 WAC: RCW 70.120A.010  
Chapters 173-400 and 173-476 WAC: RCW 70.94.152, RCW 70.94.331, RCW 70.94.860

**Statute being implemented:**  
Chapter 173-423 WAC: Chapter 70.120A RCW  
Chapters 173-400 and 173-476 WAC: 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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:  
Federal Clean Air Act - Section 110 in Part A; Part C; and Part D

DATE 2/25/16

NAME (type or print) Polly Zehm

Signature

TITLE Deputy Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: February 25, 2016

TIME: 2:16 PM

WSR 16-06-068

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** Ecology is proposing to adopt EPA requirements for sewage sludge incinerators. Ecology expects these requirements will be published in the Federal Register on or before the March 16, 2016 publication date of this notice in the *Washington State Register*. Should the incinerator rule not be included in the Federal Register by March 16, Ecology will not adopt the EPA rule when we finalize this rulemaking.

**Name of proponent:**  
Department of Ecology - Air Quality Program

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

<b>Drafting</b>	Elena Guilfoil	Dept. of Ecology, Lacey, WA	(360) 407-6855
<b>Implementation</b>			
Chapters 173-400 & 173-476 WAC	Al Newman	Dept. of Ecology, Lacey, WA	(360) 407-6810
Chapter 173-423 WAC	Brett Rude	Dept. of Ecology, Lacey, WA	(360) 407-6847
<b>Enforcement</b>			
Chapters 173-400 & 173-476 WAC	Al Newman	Dept. of Ecology, Lacey, WA	(360) 407-6810
Chapter 173-423 WAC	Brett Rude	Dept. of Ecology, Lacey, WA	(360) 407-6847

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

- Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.  
 No. Explain why no statement was prepared.

Under RCW 19.85.025(3) Ecology is not required to prepare a Small Business Economic Impact Statement because all proposed amendments fall within exemptions described in RCW 34.05.310(4).

**Amendments to Chapters 173-400 and 173-476 WAC:**

- RCW 34.05.310 (4)(c) exempts rules adopting or incorporating by reference without material change federal statutes or regulations.
- RCW 34.05.310 (4)(d) exempts rules that only correct typographical errors or clarify language of a rule without changing its effect.

**Amendments to Chapter 173-423 WAC:**

- RCW 34.05.310 (4)(e) Rules the content of which is explicitly and specifically dictated by statute (in this case RCW 70.120A.010 directs Ecology to amend its rules to maintain consistency with the California motor vehicle emission standards).

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes A preliminary cost-benefit analysis may be obtained by contacting:  
 No: Please explain:

Under RCW 34.05.328(5) Ecology is not required to prepare a cost-benefit analysis because all proposed rulemaking actions fall within allowed exemptions.

**Amendments to Chapters 173-400 and 173-476 WAC:**

- RCW 34.05.328 (5)(iii) exempts rules adopting or incorporating by reference without material change federal statutes or regulations.
- RCW 34.05.328 (5)(iv) exempts rules that only correct typographical errors or clarify language of a rule without changing its effect.

**Amendments to Chapter 173-423 WAC:**

- RCW 34.05.328 (5)(v) exempts rules the content of which is explicitly and specifically dictated by statute (in this case RCW 70.120A.010 directs Ecology to amend its rules to maintain consistency with the California motor vehicle emission standards).

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

Ecology is proposing to amend:

- **Chapter 173-400 WAC** (General Regulations for Air Pollution Sources) to incorporate new federal rules, and changes to federal rules since the last time Ecology amended this chapter.
  - Updates cover 40 CFR Parts 50, 51, 52, 53, 60, 61, 62, 63, 65, 70, 75, 80, 82, 89, 124 and 1039.
  - The New Source Performance Standards (40 CFR Parts 60 and 62) and air toxic rules (40 CFR Part 63) contain, among other updates:
    - New requirements for:
      - boilers;
      - residential wood heaters;
      - solid waste incinerators;
      - hospital/medical/ infectious waste incinerators;
      - sewage sludge incinerators; and
    - Changes to existing requirements for petroleum refineries and aluminum plants.
  - Other changes to Chapter 173-400 WAC include:
    - Consolidating the adoption date for federal rules scattered throughout the chapter into one location.
    - Correcting typographical errors.
- **Chapter 173-476 WAC** (Ambient Air Quality Standards) to include the new lower federal ozone standard and associated monitoring/measurement requirements.
- **Chapter 173-423 WAC** (Low Emission Vehicles) to include updates to California motor vehicle emission standards. Updates:
  - Provide one additional year for which the 4,000 mile Supplemental Federal Test Procedures (SFTP) may be used to certify LEV II vehicles.
  - Clarify that if a LEV II vehicle optionally certifies to the non-methane organic compound plus nitrogen oxides (NMOG+NO<sub>x</sub>) combined LEV III standards instead of separate NMOG and NO<sub>x</sub> LEV II standards, the NMOG+NO<sub>x</sub> combined LEV III standards must be met at 150,000 miles, even if the vehicle remains a LEV II vehicle.
  - Place limitations on when LEV II SULEVS can certify to the combined NMOG+NO<sub>x</sub> LEV III standards.
  - Establish an alternative NMOG+NO<sub>x</sub> fleet average that can be met as an alternative to the NMOG fleet average.
  - Incorporate elements of the federal Tier 3 regulation in those cases where the Tier 3 regulations were more stringent than LEV III.
  - Incorporate the current, applicable version(s) of:

- Test procedures to demonstrate compliance with the standards in Section 1961.
  - SAE J2727 test procedure.
  - Performance label specifications to demonstrate compliance with section 1965.
- Specify that the AC17 Test Procedure in section 1961.3 means the AC17 Air Conditioning Efficiency Test Procedures in [40 CFR 86.167-17](#).
- Change the monitoring and OBD II requirements for diesel emission control technologies, the selection criteria for test sample groups and the mandatory recall provisions in sections 1971.1 and 1968.2.
- Establish that the requirements of Section 2037 apply to medium-duty vehicles that certify to California’s heavy-duty Phase 1 greenhouse gas emission standards.
- Define “useful life” for the purposes of title 13, CCR, Article 2.1 “Procedures for In-Use Vehicle Voluntary and Influenced Recalls
- Address other changes as needed to maintain consistency with the California motor vehicle emission standards, including but not limited to:
  - Corrects the definition of heavy duty vehicles in section 1900.
  - Corrects the definitions of light-duty truck and medium-duty passenger vehicle in section 1900 to say that they also apply to vehicles certified to the standards in Section 1961.2.
  - Makes an administrative change to 960.1 heading to add the missing word “trucks.”
  - General administrative corrections.

**Why are we doing this rulemaking?**

We are doing this rulemaking to continue preserving Washington’s healthy air by maintaining consistency with federal rules and California motor vehicle emission standards.

**Chapter 173-400 WAC**

Washington rules need to require compliance with the most recent federal rules. Maintaining EPA approval of our state Air Operating Permit and Prevention of Significant Deterioration Programs requires the adoption of federal rules. Adding a single reference point for specifying the date of the federal rules proposed for adoption provides consistency for users of the rule and simplifies future updates.

**Chapter 173-476 WAC**

Adopting the lower federal ozone standard protects people from the harmful effects of ground level ozone smog and complies with a federal requirement.

**Chapter 173-423 WAC**

The federal Clean Air Act and RCW 70.120A.010 require Ecology to maintain consistency with the California motor vehicle emission standards.

**What do we intend to accomplish?**

- Continued or improved protection of human health and the environment by establishing consistency with EPA’s rules and California’s motor vehicle emission standards.
- Simplifying compliance for regulated parties.

- Maintaining delegation and approval of federal programs (Air Operating Permit, Prevention of Significant Deterioration, State Implementation Plan).

**Reasons supporting proposal:** See “Purpose of the proposal” above for this information.

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## **Attachment B: Hearing information**

Ecology will be holding two consecutive hearings to accept comments.

**Date and time:** April 5, 2016, 2 p.m.

**Location:** Department of Ecology  
300 Desmond Drive  
Lacey, WA 98503

### **Agenda:**

- **Hearing 1** – Rulemaking Proposal - comments on the proposed rule amendments
  - Presentation
  - Question and Answer session
  - Oral comments on the rule proposal
- **Hearing 2** – Immediately following, comments on submitting portions of the proposed rules into the State Implementation Plan (SIP)
  - Presentation
  - Question and Answer session
  - Oral comments on the SIP proposal

### **How to participate at the hearings:**

- **Attend in-person:** Participants can attend and provide oral or written comments at the hearings.
- **Attend via Webinar:** Ecology is offering this hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access. To join the webinar click on the following link for more information and instructions:  
<https://wadismetings.webex.com/wadismetings/onstage/g.php?MTID=e9dff18b4b8ceb0fe5073e02f22e1c11>