



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 18, 2024  
TIME: 7:36 AM

WSR 24-19-098

**Agency:** Department of Ecology AO #23-08

**Original Notice**

**Supplemental Notice to WSR** 24-03-093

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 24-03-093 ; 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) Ecology is proposing amendments to Chapter 173-400 WAC, General Regulations for Air Pollution Sources, and Chapter 173-401 WAC, Operating Permit Regulation.

For more information on this rulemaking visit: <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-400-401-air-pollution-sources>

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 22, 2024	10:00 a.m.	Webinar:  Register and see instructions:  <a href="https://waecy-wa.gov.zoom.us/meeting/register/tZ0lcO2oqjktEtDDyFJ9M-rTR8Q9rgk3_8PW">https://waecy-wa.gov.zoom.us/meeting/register/tZ0lcO2oqjktEtDDyFJ9M-rTR8Q9rgk3_8PW</a>  To join by phone:  253-205-0468  Enter meeting ID: 898 7404 2784	Presentation and public hearing

**Date of intended adoption:** February 12, 2025 (Note: This is **NOT** the effective date)

**Submit written comments to:**

Name Linda Kildahl  
Address Department of Ecology  
Air Quality Program  
300 Desmond Drive SE  
Lacey, WA 98503  
Email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.wa.gov)  
Fax N/A

Other

Beginning (date and time) September 18, 2024, at 12:00 a.m.

By (date and time) October 31, 2024, at 11:59 p.m.

**Assistance for persons with disabilities:**

Contact Ecology ADA Coordinator  
Phone 360-360-407-6831

Fax N/A

TTY For Washington Relay Service or TTY call 711 or 877-833-6341

Email [ecyADAcordinator@ecology.wa.gov](mailto:ecyADAcordinator@ecology.wa.gov)

Other

By (date) October 18, 2024

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

**Chapter 173-400 WAC:** The rulemaking will update references in sections -040, -050, -060, and -105 to incorporate an updated publication date for *Ecology's Source Test Manual – Procedures for Compliance Testing*, a technical manual used in source testing and certification. This rulemaking will also update section -025 to establish a new rule adoption date for adopting federal rules by reference.

**Chapter 173-401 WAC:** This rulemaking will repeal section -645, which establishes emergency affirmative defense provisions in Washington. The purpose is to align the rule with federal rules as required under the federal Clean Air Act. In July 2023, EPA adopted a rule update that removed the emergency affirmative defense provisions from federal operating permit program regulations under Title V of the federal Clean Air Act. This rulemaking will also correct a minor typo.

The rulemaking will also make minor administrative updates, including updating references in both chapters to two chapters of the Revised Code of Washington that were recodified in 2020.

**Reasons supporting proposal:**

**Chapter 173-400 WAC:** Amendments to this chapter are needed to incorporate and enforce the updated version of *Ecology's Source Test Manual – Procedures for Compliance Testing*. The manual establishes requirements and procedures for industrial emitters, Washington clean air agencies, and other entities conducting testing and certification of air pollution sources. Updating the rule adoption date in section -025 is needed to establish an updated date for adopting applicable federal rules by reference.

**Chapter 173-401 WAC:** Amendments to this chapter are needed to comply with EPA's direction to state permitting authorities to make necessary changes to their operating permit programs to align with the July 2023 update to the federal operating permit program regulations.

**Statutory authority for adoption:** Chapter 70A.15 RCW, Washington Clean Air Act

**Statute being implemented:** Chapter 70A.15 RCW, Washington Clean Air Act

**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: 88 FR 47029; 42 U.S.C. Chapter 85

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for Government-to-Government consultation with Tribal governments during each phase of rule development.

**Name of proponent:** (person or organization) Department of Ecology

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Linda Kildahl	Lacey	360-706-3038
Implementation	Gary Huitsing, WAC 173-400	Lacey	360-522-0925
	MengChiu Lim, WAC 173-401		360-995-3448-
Enforcement	Philip Gent	Lacey	360-918-6922

**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  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

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

Name Linda Kildahl  
Address 300 Desmond Drive SE, Lacey, WA 98503

Phone 360-706-3038  
Fax N/A  
TTY  
Email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.wa.gov)  
Other

No: Please explain:

### Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

#### (1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

CFR 40 Chapter I, Subchapter C, the federal Clean Air Act, and 40 CFR Part 52, Subpart WW, Washington State's Implementation Plan. Federal air quality standards have been updated and this rule adopts those by reference. This maintains Washington's good standing to implement the federal Clean Air Act via its rules. Not maintaining this standing would require the federal government to create a plan to implement the federal Clean Air Act.

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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)  | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((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\(4\)](#). (Does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

Incorporation by reference: WAC 173-400-025 incorporates the latest federal air quality standards by reference.

Correct or clarify language: WAC 173-401-925 incorrectly references WAC 173-491-920. It was intended to reference WAC 173-401-920. This rule makes that correction.

Dictated by statute: Washington state's Clean Air Act, Chapter 70A.15 RCW, directs the Department of Ecology: "To take all action necessary to secure to the state the benefits of the federal Clean Air Act." (RCW 70A.15.1090(2)).

#### (2) Scope of exemptions: *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; Chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The rule may

also be fully exempt from the RFA if it does not affect small businesses (i.e., it does not impose compliance costs on small businesses, or on any businesses).

We analyzed the impacts of the proposed rule amendments relative to the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline and reflects the most likely regulatory circumstances that entities would face if Ecology does not adopt the proposed rule.

### **Baseline for this rulemaking**

The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rulemaking, the baseline includes:

- The federal Clean Air Act, CFR, Title 40, Chapter I, Subchapter C.
- Washington State's Clean Air Act, Chapter 70A.15 RCW.
- Chapter 173-400 WAC, General Regulations for Air Pollution Sources.
- WAC 173-401-645, the section of the WAC containing the emergency defense provision.
- The EPA-approved SIP for Washington State, 40 CFR Part 52, subpart WW.

### **Summary of proposed rule amendments**

The proposed rule amendments would:

- Change the adoption by reference date of federal air quality rules to the adoption date of this proposed rule (WAC 173-400-025).
- Update a reference to Ecology's Source Test Manual - Procedures for Compliance Testing (STM) (WAC 173-400-040, 105).
- Remove old STM methods as testing options and a limit on carbonyl for incinerators (WAC 173-400-050, 060).
- Repeal the emergency defense for air emission exceedances, per federal mandate (WAC 173-401-645).

### **Change the adoption by reference date of federal air quality rules to the adoption date of this rule (WAC 173-400-025)**

#### **Baseline:**

In WAC 173-400-025, the federal rules mentioned in Chapter 173-400 WAC are adopted by reference as they existed on August 24, 2022.

#### **Proposed:**

The proposed rule changes the date of adoption of federal rules as they exist to February 12, 2025, which is the expected adoption date this proposed rule.

#### **Expected impact:**

There is no expected cost from this aspect of the proposed rule, as compared to the baseline. Washington benefits by maintaining good standing to implement the federal CAA as required by RCW 70A.15.1090.

The latest federal standards were issued February 7, 2024.

### **Update a reference to Ecology's STM (WAC 173-400-040, 105)**

#### **Baseline:**

In sections WAC 173-400-040, 105 the STM as of September 20, 2004 is referenced. The manual contains 14 methods of testing for determining amounts of air pollution from sources of emissions.

#### **Proposed:**

An updated STM, with a publication date of February 12, 2025, would instead be referenced to replace the 2004 manual. The updated manual contains two methods for evaluating air pollution sources. 12 previously approved testing methods would be removed.

#### **Expected impact:**

No significant cost is expected due to the changes in the STM which would be referenced. The 2004 version of the STM contains outdated information and testing methods. The 12 removed procedures have been replaced in practice by other testing methods available elsewhere and therefore no longer needed in Ecology's manual. While regulated parties could use the outdated methods, outreach indicated they were in disuse and there was no opposition to their removal. The STM was meant to contain only testing methods not available elsewhere. Some of the newer alternative methods are both improved and safer and contained in federal regulations.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing method.

The regulated community benefits by having an up-to-date and more concise guidance manual.

### **Remove old STM methods as testing options and limits on carbonyl (WAC 173-400-050, 060)**

#### **Baseline:**

WAC 173-400-050 is titled "Emission standards for combustion and incineration units". STM methods are allowed in testing for particulate matter and carbonyl emissions. WAC 173-400-050 also specifies, for incinerators, a limit for carbonyls of 100 parts per million (ppm).

The 100-ppm carbonyl limit has been removed from the Washington State Implementation Plan (SIP) with the EPA's approval. However, the carbonyl limit currently in this section is excepted from that approval. This proposed amendment would make the WAC and SIP consistent in this regard, allowing the EPA to remove the exception. SIPs are incorporated into federal regulations and published in the Code of Federal Regulations.

In WAC 173-400-060, test methods in the current STM are allowed in determining compliance for particulate emissions of general process units.

#### **Proposed:**

The proposed rule removes methods in the 2004 STM as an option for testing for particulate matter for combustion, incinerator, and general process units.

For incinerators, it removes the 100-ppm carbonyl limit.

#### **Expected impact:**

Minimal if any cost is expected from this change while the state will benefit by having an updated STM and a WAC more consistent with its SIP. The 2004 version of the STM contains outdated information and testing methods.

The 12 test methods proposed for removal have been replaced in practice with other more complete, appropriate, and in some cases, safer, methods specified in 40 C.F.R. Parts 50, 60, 61, 63.

We don't expect parties to want to use the old methods and received no opposition to their removal during outreach.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing.

The removal of the carbonyl limit makes the WAC consistent with other parts of Washington State's federally approved SIP, which is part of the baseline

### **Repeal of WAC 173-401-645**

#### **Baseline:**

WAC 173-401-645 allows an emergency situation as a defense for exceeding air emissions standards. An emergency consists of "... any situation arising from sudden and reasonably unforeseeable events beyond the control of the source [of the pollution] ...".

This provision allows air pollution sources to avoid liability in enforcement proceedings by arguing the violations of emissions limitations were caused by an "emergency".

#### **Proposed:**

The proposed amendment would repeal section 173-401-645, where this defense is established. This would align the state's rules with EPA's July 2023 decision to remove the emergency affirmative defense provisions from federal operating permit regulations under Title V of the federal CAA.

Expected impact:

There is no expected cost from this aspect of the proposed rule. It is outside of Ecology's discretion. The EPA directed state air quality permitting authorities to make necessary changes to their operating permit programs.

Washington state will benefit by being in compliance with federal regulations. The federal rule became effective August 21, 2023. Generally, if federal authorities determine states are not in compliance with the federal CAA they may need to intervene with a Federal Implementation Plan to ensure the requirements of the federal law are met. This would entail developing a federal plan to stand in lieu of the state's either inadequate or missing plan.

The rule proposal: Is not exempt. *(Complete section 3.)* No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*


If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

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

<b>Date:</b> 9/18/24	<b>Signature:</b> 
<b>Name:</b> Heather Bartlett	
<b>Title:</b> Deputy Director	