



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: November 13, 2025

TIME: 8:16 AM

WSR 25-23-033

Agency: Department of Ecology AO #24-10

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 25-05-004 ; 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 173-400 WAC Emission standards for combustion and incineration units, Chapter 173-425 WAC Outdoor burning, and Chapter 173-430 WAC Agricultural burning.
<https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-425-430-400>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
01/06/2026	10:00am-12:00pm	Online via Zoom https://waecy-wa.gov.zoom.us/join/9876543210	Meeting ID: 896 7940 1480 Passcode: 146058 Find your local call-in number: https://waecy-wa.gov.zoom.us/join/9876543210

Date of intended adoption: 03/18/2026 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name Caitlyn Roehmholdt

Address Department of Ecology

Air Quality Program

PO Box 47600

Olympia, WA 98504-7600

Email Caitlyn.roehmholdt@ecy.wa.gov

Fax

Other Online:

<https://aq.ecology.commentinput.com/?id=EbS36DgB9>

Beginning (date and time) 11/13/2025, 12:00am

By (date and time) 01/20/2026, 11:59pm

Assistance for persons with disabilities:

Contact Caitlyn Roehmholdt

Phone 360-742-7554

Fax

TTY People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington

Relay Service at 711

Email Caitlyn.roehmholdt@ecy.wa.gov

Other <https://ecology.wa.gov/about-us/accessibility-equity/accessibility>

By (date) 12/29/2025

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking is proposing amendments to Chapters 173-425 WAC Outdoor burning, and Chapter 173-430 WAC Agricultural burning to include flame cap kilns as an allowed burning device. Flame cap kilns are outdoor containers which are used for burning natural vegetation from forestry or agricultural activities. This rulemaking will ensure flame cap kilns are only used for burning that is already legal in Washington. This rulemaking also proposes changes to WAC 173-400-050, Emission standards for combustion and incineration units, to modify language for permitting air curtain incinerators (ACI). ACIs are portable containers that can be used for burning woody debris (slash) from forestry operations. Currently, only one ACI has been permitted in Washington State. This rulemaking intends to make the ACI permitting process easier for both applicants and Ecology staff.

Reasons supporting proposal: The definitions of "flame cap kiln" and "silvicultural burning" are being added and modified, respectively, to align rule language with amendments made to RCW by Substitute Senate Bill 6121, signed into law in the 2024 legislative session. Air curtain incinerators are increasingly being looked at as an alternative to open burning, and we will explore streamlining the ability to permit them. The current ACI permitting process is extensive, and we have received

comments that there are many barriers to applying. Current technology available for air curtain incinerators makes it difficult to meet some emission limits. Therefore, permit applications for ACIs require additional consideration and information. This requires additional work by the applicant and Ecology, and additional time is needed to issue the necessary permit. With proper criteria and operation standards, air curtain incinerators may be more beneficial to air quality than open burning. .

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? ☐ Yes ☒ No

Federal Court Decision? ☐ Yes ☒ No

State Court Decision? ☐ Yes ☒ No

If yes, CITATION:

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

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Caitlyn Roehmholdt	Lacey, WA	(360) 742-7554
Implementation	Phil Gent	Lacey, WA	(360) 918-6922
	Catherine Lucke	Lacey, WA	(564) 669-1601
Enforcement	Karin Baldwin	Spokane, WA	(509) 202-5819
	Will Strand	Union Gap, WA	(509) 379-1464

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 Caitlyn Roehmholdt

Address Department of Ecology

Air Quality Program

PO Box 47600

Olympia, WA 98504-7600

Phone (360) 742-7554

Fax

TTY People with speech disability may call TTY at 877-833-

6341. People with impaired hearing may call Washington

Relay Service at 711

Email Caitlyn.roehmholdt@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:

☐ 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:

☐ [RCW 34.05.310](#) (4)(b)
(Internal government operations)

☐ [RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

☒ [RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

☒ [RCW 34.05.310](#) (4)(e)
(Dictated by statute)

☐ [RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

☐ [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). (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: We analyzed the costs of the proposed rule amendments in the Preliminary Regulatory Analyses for this rulemaking. We determined that the proposed rule amendments would not result in costs compared to the baseline. The proposed rule amendments reduce the regulatory cost associated with a business activity, which may voluntarily alter behavior in ways that change overall costs. However, all baseline business operations may continue under the proposed rule amendments with no additional cost.

The Regulatory Fairness Act (RFA) requires Ecology to prepare a Small Business Economic Impact Statement if the proposed rule will impose more than minor costs on businesses in an industry (RCW 19.85.030(1)(a)). As the proposed rule amendments would not impose any costs, Ecology is not required to complete the Small Business Economic Impact Statement or any other analyses under the Regulatory Fairness Act.

The RFA also states that it does not apply to the adoption of a rule if Ecology is able to demonstrate that the proposed rule does not affect small businesses (RCW 19.85.025(4)). As the proposed rule amendments would not impose any costs on small businesses, Ecology is exempt from performing additional analyses under the Regulatory Fairness Act.

(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](#)):

☐ 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

Date: 11/13/2025	Signature: 
Name: Heather Bartlett	
Title: Deputy Director	