



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Final Cost-Benefit and Least Burdensome Alternative Analyses**

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*Chapter 173-400 WAC*

*General Regulation for Air Pollution Sources*

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For more information contact:

Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Phone: 360-407-6800

Washington State Department of Ecology - [www.ecy.wa.gov](http://www.ecy.wa.gov)

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

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# **Final Cost Benefit and Least Burdensome Alternative Analysis**

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## **Chapter 173-400 WAC General Regulation for Air Pollution Sources**

Prepared by

*Shon Kraley, Ph.D.*

*for*

Air Quality Program  
Washington State Department of Ecology



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# Executive Summary

The Federal Clean Air Act requires that Washington State develop a plan to meet and maintain the National Ambient Air Quality Standard (NAAQS) in all areas of the state. The Act also requires the state to have a specific plan for how we will meet the standards in each area that is designated a nonattainment area. These plans, known as State Implementation Plans or SIPs, are developed by state and local air quality management agencies and submitted to EPA for approval.

The Department of Ecology's (Ecology) amendments to the General Regulation for Air Pollution Sources (Chapter 173-400 WAC) offer a net benefit to the social and business welfare of the state. Many of the amendments are exempt from analysis because they are considered "housekeeping" amendments, are mandated by law, or are required by the EPA to get approval of a SIP.

Ecology is amending Chapter 173-400 WAC to assure that it is consistent with federal requirements so that Washington can get EPA approval for the SIPs in the new source review (NSR) and prevention of significant deterioration (PSD) permitting programs.

## Cost-benefit analysis

The adopted rule doesn't impose additional costs, instead these changes are expected to relieve some of the regulatory burden on those required to comply with the rule.

The primary benefit of the rule is that it will be easier for emitters to understand:

- The regulatory framework they are subject to
- The permitting requirements they must follow

The amended rule will also provide better access to current requirements and accurate references to help emitters comply with the rule. Additionally, Ecology expects the "housekeeping" changes to increase readability and implementation consistency.

While it is not possible to quantify these benefits to any degree of certainty, they are greater than zero.

The adopted amendments create benefits and do not create costs. Therefore, the net benefits of the rule are greater than zero.

## Least burdensome analysis

Based on research and analysis required by RCW 34.05.328(1)(e) the Department of Ecology determines:

There is sufficient evidence that the adopted rule is the least burdensome version of the rule for those who are required to comply.

# **I. Conclusion**

Ecology determines that the benefits of the adopted rule are greater than the costs and that we are adopting the least burdensome alternative of the rule.

# **II. Purpose of analysis**

Ecology is amending the General Regulation for Air Pollution Sources (Chapter 173-400 WAC). The Administrative Procedures Act (RCW 34.05.328(d)(e)) requires two types of analyses before adopting a significant legislative rule – a cost-benefit analysis and a least burdensome alternative analysis. This report provides the results of these analyses and shows the potential impacts associated with the adopted rule.

# **III. Background**

## **History of existing rule**

### **Washington clean air act chapter 70.94 RCW**

Washington's Clean Air Act was first enacted by the state legislature in 1957. The Act has been periodically amended since that time. The most significant amendments occurred in 1965, 1971, and 1991.

The Act directs Ecology to implement the programs and requirements in the state Clean Air Act (CAA) by adopting rules. These rules apply statewide, except where a local air pollution control authority has implemented its own rules that are at least as stringent as Ecology's rules. It is the intent of the Act that the implementation of programs and rules to control air pollution shall be the primary responsibility of the local air pollution control authorities and Ecology.

## **Reason for this rule Adoption**

The Federal Clean Air Act requires that Washington State develop a plan to meet and maintain the National Ambient Air Quality Standard (NAAQS) in all areas of the state and a specific plan to meet the standards for each area designated nonattainment for a NAAQS. These plans, known as State Implementation Plans or SIPs, are developed by state and local air quality management agencies and submitted to EPA for approval.

Ecology is amending the General Regulation for Air Pollution Sources (Chapter 173-400 WAC) to assure it is consistent with federal requirements so Washington can get EPA approval for the SIPs in the new source review (NSR) and prevention of significant deterioration (PSD) permitting programs.

The previous state NSR rule was approved into the SIP in 1994 based on the rule in place in 1992. Our new source review program has changed significantly since the 1992 state rule. The difference in requirements leads to the potential for double jeopardy for an air pollution source

being in violation of requirements of the SIP while complying with the state regulation's requirements, or violating the current regulation while complying with the rule in the SIP.

The sections of Chapter 173-400 WAC that are integral for SIP approval of the state's minor NSR and the PSD program have been amended to support our future SIP proposal. Gaining SIP approval of the minor NSR and PSD programs helps ensure that the state is aligned and consistent with federal law while meeting and maintaining good air quality and protecting citizen's health.

Washington currently operates a delegated PSD program. This results in immediate conflicts as EPA makes changes to its PSD rule, leading to direct EPA involvement in the permitting process. Having SIP approval of our program would reduce the rate of the conflicts with EPA by giving the state up to three years for our PSD program rule to be revised and submitted for re-approval.

This rule amendment is essential to maintain state control of the approval and delegation of federal programs. If we fail to address the SIP deficiencies, EPA could elect to pull approval of our delegated federal programs that implement the federal clean air act.

Washington is obligated to submit infrastructure SIPs (required by federal Clean Air Act section 110) that demonstrate Ecology has the legal authority to implement the NAAQS. One aspect of that legal authority is SIP-approval of the rules and programs that implement the new NAAQS. For example, these revisions will support the 2006 PM2.5 NAAQS infrastructure SIP. The revisions ensure that these regulations support attainment and maintenance of the NAAQS in Washington.

Gaining SIP approval of the relevant parts of Chapter 173-400 WAC supports submittal of these plans as needed to avoid EPA implementation of a federal implementation plan.

## **IV. Scope of Analysis**

The majority of the changes to WAC 173-400 fall into one of three revision categories:

1. Federal (EPA) and state mandates.
2. Housekeeping.

### **Federal (EPA) and state mandates**

The Administrative Procedures Act (RCW 34.05.328) exempts, from this analysis, any rule change necessary to meet state and federal mandates. Examples of this type of change include the revisions in WAC 173-400-171, Public notice. The section has been revised to make it "media neutral" to recognize changes in technology and the reduced reliance on publishing legal ads in hard-print newspapers.

A common change in the rule is the revised date for adoption of federal code by reference. The adoption by reference date was changed in roughly 40 locations in the rule from July 1, 2010 to May 1, 2012. Chapter 70.94 RCW, Washington clean air act, requires Ecology to "preserve,



protect, and enhance” the air quality and to accept delegation of federal programs. This charge is partially met by keeping the state rules in sync with federal regulations.

## **Housekeeping**

Other changes are considered “Housekeeping”. These are also exempt from the analysis required in RCW 34.05.328. These “housekeeping” amendments are needed to make the rule internally consistent. This type of change is shown by inserting or correcting pointers to specific sections in Chapter 173-400 WAC which improve the readability of the rule, pointing the reader to relevant sections. Other housekeeping actions include renumbering of sections, correcting spelling, grammatical, and clerical errors.

## **V. Comparison of the Prior and Adopted Rules**

Changes to the previous rule serve several purposes, including:

- Bringing the rule into Federal compliance
- Updating references
- Streamlining and clarifying the regulatory process

The changes which were not required by EPA neither increase nor decrease the regulatory burden on those subject to regulation.

## **VI. Baseline for Analysis**

The baseline for analysis of the adopted rule is the regulatory environment in the absence of any changes. Without the adoption of the rule, the previously existing requirements would remain in place.

## **VII. Analysis of Costs & Benefits**

The current analysis will focus on only those costs and benefits generated by amendments that are not exempt from analysis.

### **Costs**

The adopted rule doesn't impose additional costs, instead these changes are expected to relieve some of the regulatory burden on those required to comply with the rule.

### **Benefits**

The primary benefits from the adopted rule amendments result from increased clarity for emitters as to which regulatory framework they are subject to, the permitting requirements that they face,

better access to current and accurate references for compliance purposes, and less ambiguity and uncertainty. Additionally, the “housekeeping” changes are expected to increase readability and implementation consistency.

While it is not possible to quantify these benefits to any degree of certainty, they are greater than zero.

## **Net benefits**

The adopted rule creates benefits and doesn't create costs. Therefore, the net benefits of the adopted rule are greater than zero.

## **VIII. Response to Comments on Preliminary CBA**

Several comments on the Preliminary Cost-Benefit and Least Burdensome Alternative Analysis (12-02-005) focused on 173-400-720(4)(b). This section has been deleted from the final rule language.

## **IX. Least Burdensome Analysis**

RCW 34.05.328(1)(e) requires Ecology to “determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

## **Conclusion**

Based on research and analysis required by RCW 34.05.328(1)(e) the Department of Ecology determines:

There is sufficient evidence that the adopted rule is the least burdensome version of the rule for those who are required to comply, given the goals and objectives of the law for Ecology to adopt the rule.

## **Alternatives considered**

Ecology considered the four alternatives below:

1. Do nothing
2. Make only those changes necessary to bring the rule into EPA compliance
3. Include a change to the definition of “air contaminant” that would limit SIP applicability to pollutants with a NAAQS or their precursors.
4. The amended rule as adopted

## **Alternative 1: Do nothing**

If Ecology did not update Chapter 173-400 WAC, our State Implementation Plan would continue to be out of compliance with EPA requirements. There are many reasons why State Implementation Plans (SIPs) are necessary and important.

- **SIPs protect our air:** SIPs play a key role in meeting and maintaining good air quality and protecting citizen's health.
- **SIPs are required by law:** The federal Clean Air Act requires states with counties that fail to meet NAAQS to produce a SIP.
- **Failure to produce a SIP has consequences:** If a state fails to submit or implement a SIP, or if it submits a SIP that is unacceptable to the EPA, the EPA has the power to impose a federal implementation plan with sanctions or other penalties. Typical sanctions include cutting off federal funds and setting more stringent pollution offsets for certain emitters. Offsets are the reduction of current emissions at a rate equal to or greater than the amount of emissions expected to be produced in a new project.

SIPs typically consist of the following elements: a narrative, rules, and agreements. Chapter 173-400 WAC is one of the rules that supports Washington's SIP. If Ecology failed to amend the rule, the EPA could file a federal implementation plan against the state.

## **Alternative 2: Make only those updates required to meet EPA requirements**

Ecology finds that if the amendments had been limited to just those required to meet federal Clean Air Standards and EPA requirements, that it would have missed opportunities to reduce the compliance burden for Washington businesses.

## **Alternative 3: Include a change to the definition of "air contaminant" that would limit SIP applicability to pollutants with a NAAQS or their precursors**

The rule language proposed during the public comment period included a change to the definition of "air contaminant" that would explicitly clarify that SIP applicability is limited to criteria pollutants and their precursors. Ecology is not including that change in the final rule.

## **Alternative 4: The amended rule as adopted**

Changes other than the updates to meet EPA requirements are intended to make the rule less burdensome for those required to comply with it. The intent of these changes is to improve the permitting process for both large and small business.

For the adopted rule revision itself, much of the rule language development was derived by a team of EPA and Ecology staff working together. Staff and attorneys worked collaboratively to identify the deficiencies in the existing rule language and to identify possible solutions that fit the needs of both the state and federal agencies.

## **Housekeeping**

The amended rule updates definitions, standardizes terms used throughout the rule, corrects references to other WACs, and deletes outdated language and tables. All of these “housekeeping” edits are intended to increase readability and implementation consistency.

Ecology expects this to reduce the degree of effort and expenditure necessary for the business community to comply with the law.