



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

**Chapter 173-400 WAC - General
Regulations for Air Pollution Sources**

**Chapter 173-423 WAC – Low Emission
Vehicles**

**Chapter 173-476 WAC – Ambient Air
Quality Standards**

Summary of rulemaking and response to comments

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: General Regulations for Air Pollution Sources
Low Emission Vehicles
Ambient Air Quality Standards

WAC Chapter(s): Chapter 173-400, Chapter 173-423, Chapter 173-476

Adopted date: May 31, 2016

Effective date: July 1, 2016

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for Adopting the Rule

This rulemaking amends three rules:

- General Regulations for Air Pollution Sources – Chapter 173-400 WAC
 - Washington rules need to comply 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.
- Low Emission Vehicles – Chapter 173-423 WAC
 - The federal Clean Air Act and RCW 70.210A.010 require Ecology to maintain consistency with the California motor vehicle emission standards.
- Ambient Air Quality Standards – 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.

Ecology is making the rule changes to:

- Continue or improve protection of human health and the environment by establishing consistency with federal rules and California motor vehicle emission standards.

- Simplify compliance for regulated sources by adding a single reference point for specifying the date of the federal rules.
- Maintain delegation and approval of federal programs (Air Operating Permit, Prevention of Significant Deterioration, State Implementation Plan).
- Correct spelling errors.

The purpose of the amendments is to adopt new requirements for:

- **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; 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 173-423 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+NOx) combined LEV III standards instead of separate NMOG and NOx LEV II standards, the NMOG+NOx 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+NOx LEV III standards.
 - Establish an alternative NMOG+NOx 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.
- **Chapter 173-476 WAC** (Ambient Air Quality Standards) to include the new lower federal ozone standard and associated monitoring/measurement requirements.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on February 25, 2016 and the adopted rule filed on May 31, 2016. Ecology made the following changes:

- In Chapter 173-400 WAC, Ecology added “in effect on the date in WAC 173-400-025” throughout the rule wherever federal rules were adopted for clarity and consistency.
- Ecology did not adopt EPA requirements for sewage sludge incinerators because EPA had not adopted their rule in time for the adoption of Ecology’s rule amendments.

Response to Comments

Ecology accepted comments between February 25, 2016 until April 12, 2016. In addition, a public hearing was held on April 5, 2016. Ecology received no comments at the hearing, by mail, email, or in another written format.

Appendix A: Transcript from public hearing.

I'm Melanie Forster, hearing's officer for this hearing. This afternoon we are to conduct a **hearing on the proposed amendments to Chapter 173-400 WAC – General Regulations for Air Pollution Sources, Chapter 173-423 WAC—Low Emission Vehicles, and Chapter 173-476 WAC—Ambient Air Quality Standards.**

Let the record show it's 3:04 p.m. on April 5, 2016 and this hearing is being held at the Department of Ecology, headquarters building, 300 Desmond Drive, Lacey, Washington 98503. This hearing is also being broadcast as a webinar.

Legal notice of this hearing was published in the Washington State Register on February 25, 2016, Washington State Register Number 16-06-068.

In addition, notices of the hearing were sent by email notices to three different Ecology listservs. Notice was also published in the following papers: Daily Journal of Commerce on March 7, 2016 and Ecology's public involvement calendar on February 25, 2016.

It looks like we don't have any in-person attendees. So, if you are interested in providing comment on the webinar, please indicate in your chat box and we will unmute your line so that you can provide comments. I understand both lines are unmuted. So if you are interested in providing comment please let us know.

No comments. (statement from technical staff in the room)

No one wishes to provide testimony.

Let the record show Ecology held the hearing on this rule proposal. We had two attendees but no one wished to provide testimony.

If you would like to send Ecology written comments, please remember they are due by April 12, 2016. You may send them to Elena Guilfoil, PO Box 47600, Olympia, Washington 98504-7600. Or you may email comments to: AQComments@ecy.wa.gov. You may even fax comments to 360-407-7534.

All testimony received at this hearing along with all written comments received no later than April 12, 2016 will be part of the official hearing record for this proposal.

Ecology will send notice about the Concise Explanatory Statement or CES publication to everyone who provided written comments or oral testimony on this rule proposal and submitted contact information, everyone who signed in for today's hearing that provided an email address, and other interested parties on the agencies mailing lists for this rule.

The CES will among other things, contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but did not give us your contact information, contact Elena Guilfoil at the contact information provided for submitting comments.

The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for April 20, 2016. If the proposed rule should be adopted that day and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further help to you, please do not hesitate to ask or you can contact Elena Guilfoil if you have other questions.

On behalf of the Department of Ecology, thank you for attending.
Let the record show that this hearing is adjourned at 3:08 p.m.

I'm Melanie Forster, hearing's officer for this hearing. This afternoon we are to conduct a **hearing on including amendments to Chapters 173-400 and -476 WAC in Washington's State Implementation Plan, or SIP, and include portions of Chapter 173-400 into the Benton Clean Air Agency SIP**

Let the record show it's 3:17 p.m. on April 5, 2016 and this hearing is being held at the Department of Ecology Headquarters, room 32, 300 Desmond Drive, Lacey, Washington 98503. This hearing is also being broadcast as a webinar.

Notice of the hearing was sent by email to 3 Ecology listservs. Notice was also published in the Daily Journal of Commerce on March 7, 2016 and in the Tri City Herald on March 10, 2016. It was also published in Ecology's online Public Involvement Calendar on February 25, 2016.

It looks like no one is interested in providing oral testimony. I'll give you a chance. If you change your mind and would like to provide testimony. Looks like nobody has spoken up.

Let the record show Ecology held the hearing on this proposal and one person attended and no one wanted to provide testimony.

Please remember that if you would like to send Ecology written comments, they are due April 12, 2016. You may send them to Debebe Dererie, PO Box 47600, Olympia, Washington 98504-7600. You may email comments to: AQComments@ecy.wa.gov. You may also FAX comments to 360-407-7534.

On behalf of the Department of Ecology, thank you for attending. Let the record show that this hearing is adjourned at 3:30 p.m.