



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-166 WAC
Emergency Drought Relief

Summary of rulemaking and response to comments

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Publication and Contact Information

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For more information contact:

Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-6872

Washington State Department of Ecology - <https://ecology.wa.gov/>

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

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Concise Explanatory Statement

Chapter 173-166 WAC

Emergency Drought Relief

Water Resources Program
Washington State Department of Ecology
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Table of Contents

Publication and Contact Information	1
Concise Explanatory Statement	1
Chapter 173-166 WAC	1
Emergency Drought Relief	1
Introduction.....	1
Reasons for Amending the Rule	2
Differences Between the Proposed Rule and Adopted Rule	2
List of Commenters and Response to Comments	3
List of commenters	3
Response to comments	3

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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 The Washington State Department of Ecology's (Ecology) response to public comments.

This Concise Explanatory Statement provides information on Ecology's rule amendment of:

Title: Emergency Drought Relief

WAC Chapter(s): Chapter 173-166 WAC

Adopted date: April 11, 2018

Effective date: May 12, 2018

To see more information related to this or other Ecology rulemaking please visit our web site:
<https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>

Reasons for Amending the Rule

During the 2015 Drought, the Legislature allocated funding for emergency drought relief, including grants to public entities for assuring reliable public water supplies, augment water supplies for farmers, and to provide water to support stream flows for fish. The funding language in chapter 173-166 WAC only provided for grants and loans to benefit fish and agriculture. It was therefore necessary to adopt a temporary emergency rule, chapter 173-167 WAC, to implement the 2015 drought grant program, which included public water supplies as well as fisheries and agriculture.

Having two drought relief rules in place at one time caused some confusion. In addition, we received legal advice from the Attorney General's Office that we should remove the appeals section from the funding rule as the Pollution Control Hearings Board does not have the authority to hear appeals of the agency's funding decisions.

Chapter 173-167 WAC expired in early November of 2015, but the out-of-date funding language and unaltered appeal language in chapter 173-166 WAC stayed in effect. Amending the rule was necessary to alleviate the two issues. A rule amendment also supplied the opportunity to make the rule easier to implement and understand, update the rule to better reflect statute and actual practices, and correct out-of-date agency information.

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 no differences between the proposed rule filed on January 2, 2018 and the adopted rule filed on April 11, 2018.

List of Commenters and Response to Comments

List of commenters

Ecology received one comment letter related to the rule proposal amendment. The comment letter was submitted by:

- Hansi Hals, Natural Resource Director of the Jamestown S’Klallam Tribe

Response to comments

Comment

“[T]he weather conditions Washington experienced in 2015 may be representative of “the norm” for our near future. It is therefore prudent to plan for projected climate trends so as to prevent or reduce any associated hardships. We hope that any amendment proposed for Emergency Drought Relief would strive for this.”

Response

We agree regarding the importance of planning for long term climate changes and the Department is doing so. However, the scope of this rule is emergency drought response, consistent with RCW 43.83B – Water Supply Facilities.

Comment

As a recipient of 2015 emergency drought relief funding, and given that continued extreme climate patterns are anticipated, the Jamestown S’Klallam Tribe welcomes improvements to how droughts are handled via rule(s), especially regarding improved access to funding for drought response. As Ecology’s 2015 Drought Response Summary (March 2016) declares, funding uncertainty related to the 2015 state-wide drought meant delays in response, and because of this, “. . . it was difficult for many entities to design and construct projects that provided timely drought relief. This delay also hampered drought response by partner agencies . . .” This sentiment was true in the Dungeness. For example, drought relief funding was not accessible until July 2015, well after drought planning first initiated (Winter 2014) and the first impacts were encountered (around May 2015), and only following a lengthy and duplicative application process.

“Ecology’s 2015 Drought Summary reflects on the above types of challenges experienced during the 2015 drought, and considerations for future response. It advises when planning for future droughts to use the lessons learned in 2015, and even highlights the fact that a State Drought Preparedness Account, which “. . . allowed agencies to begin drought response activities immediately when a drought was declared,” such as in 2005, was not accessible at the time of the 2015 drought.”

Response

The Legislature allocated drought relief funding July 1, 2015. Despite the potential benefits of having emergency response funding available earlier, before the legislative allocation, we did not have the authority to implement a grant funding program.

The drought relief funding language in Chapter 173-166 WAC repealed in this rule amendment was unused during the 2015 drought, so neither facilitated nor delayed the availability of emergency funding. We adopted an emergency (temporary) rule to implement the 2015 drought relief funding program, as the funding language in Chapter 173-166 WAC was incompatible with the legislative budget proviso that allocated the funds. The emergency funding rule, Chapter 173-167 WAC, was adopted and took effect on July 10, 2015.

Comment

“[T]he [2015 Drought] report’s recognition of the importance of financial planning for droughts is not reflected in the proposed changes to the rule. Rather the proposed amendment possibly has the opposite effect by making the financial support less certain.

“It is not clear how removing all funding assistance language from the rule improves the ability to alleviate drought conditions through drought projects and measures. Please explain how the proposed changes will improve drought preparedness and access to funding assistance, and how future drought response funding will be managed.”

Response

We were unable to use the funding language in Chapter 173-166 WAC to implement the 2015 emergency drought relief funding program as it did not meet the legislative budget proviso allocating the funding. Adoption of an emergency drought funding rule was necessary to implement the grant program, but having two drought funding rules in place at one time caused some confusion.

Should the Legislature ever reinstate ongoing drought contingency funding with set provisions, we intend to redevelop and adopt a permanent rule to implement the drought relief funding program. Meanwhile the use of temporary emergency rules allows us to modify the program to reflect any change in legislative directives (as occurred in 2015), to incorporate lessons learned from past funding programs, and to possibly accommodate new or developing circumstances.

Comment

While the detrimental impacts of the 2015 drought were long-term and wide-ranging, it has also been an opportunity to recognize the strengths and weaknesses of Washington’s climate change preparedness. Any changes to drought relief rules should take those lessons into account.

Response

We agree.