

Rule Development Plan

New Source Review

Repeals of Sections in WAC Chapter 173-400 and All of Chapter -460

Incidental Changes to WAC 173-400, -401, -405, -410, -415, -434, -490,
& -491

Creation of New WAC Chapter 173-465

Administrative Order Number 99-02

Rule Category: Significant Legislative Rule

Approvals:

Tami Dahlgren Date
Education and Environmental Outreach Specialist

Jerry Thielen Date
Rules Coordinator

Mary Burg Date
Air Quality Program Manager

Staff Contact:
Steve Cross
Air Quality Program
(360) 407-6875

TABLE OF CONTENTS

TABLE OF CONTENTS	2
ACRONYMS AND ABBREVIATIONS	3
GENERAL INFORMATION	3
LEGISLATIVE AND REGULATORY HISTORY	4
PURPOSE	5
ISSUES	5
RELATED FEDERAL AND STATE REQUIREMENTS.....	11
<i>Applicable Federal Rule</i>	11
<i>Conflicts with Other State or Federal Statutes or Regulations</i>	11
SEPA COMPLIANCE.....	11
ASSISTANT ATTORNEY GENERAL INVOLVEMENT	12
PILOT PROGRAM AND TESTING	12
POLLUTION PREVENTION AND RESOURCE CONSERVATION	12
<i>Pollution Prevention</i>	12
<i>Resource Conservation</i>	12
<i>Pollution Prevention Disincentives</i>	12
INTERNAL COORDINATION	12
CROSS PROGRAM COORDINATION.....	12
REGIONAL OFFICE COORDINATION	13
EXTERNAL COORDINATION	13
TRIBAL.....	13
<i>How will the rule affect tribal governments?</i>	13
<i>Tribal coordination</i>	13
LOCAL GOVERNMENT	13
OTHER STATE AND FEDERAL AGENCIES	14
<i>Other State Agencies</i>	14
<i>Effect on Other Regulatory Programs</i>	14
<i>Impact on Federal Agencies</i>	14
STAKEHOLDER STRATEGY.....	14
<i>Negotiated Rule Making</i>	15
<i>Ensure Clear Rule</i>	15
PUBLIC INVOLVEMENT PLAN	15
<i>Who is affected by changes to the NSR rule?</i>	15
<i>How are they affected?</i>	15
<i>When should these stakeholders be involved?</i>	16
<i>How should the stakeholders be involved?</i>	16
<i>Who would be kept informed about the rule amendment and how?</i>	16
ECONOMIC ANALYSIS	16
BENEFITS/COSTS	16
ECONOMIC IMPACT COMPLIANCE	16
IMPLEMENTATION	17
EXTERNAL IMPLEMENTATION	17
<i>Rule Implementation and Enforcement</i>	17
<i>Communicating Rule to Affected Parties</i>	17
<i>Voluntary Compliance</i>	17
<i>Coordination with Other Agencies</i>	17

<i>Measuring Results</i>	17
INTERNAL IMPLEMENTATION	17
<i>Staff Time and Resources Required to Implement</i>	17
<i>Agency/Program Implementing the Rule</i>	18
ADMINISTRATIVE	18
STAFF TIME AND RESOURCES REQUIRED	18
TIMELINE	18
PUBLIC INVOLVEMENT STRATEGY WORKSHEET: CHANGES TO NSR	20

Acronyms and Abbreviations

APA.....	Administrative Procedures Act
AQP.....	Ecology Air Quality Program
ASIL.....	Ambient source impact level
DNS.....	Determination of non-significance
Ecology.....	the Washington Department of Ecology
EIS.....	Environmental impact statement
EPA.....	the United States Environmental Protection Agency
IRIS.....	Integrated Risk Information System
MACT.....	Maximum achievable control technology
NAICS.....	North American Industry Classification System
NOCA.....	Notice of construction approval
NSR.....	New source review
SEPA.....	the State Environmental Policy Act
SIC.....	Standard Industrial Code
SIP.....	State Implementation Plan
SQER.....	Small quantity emission rate

GENERAL INFORMATION

Many chapters will be impacted by these proposed amendments simply because section numbers would change that are cross-referenced in these other chapters. Several sections from chapter 400 will be repealed, as would all of chapter 460. The content of these repealed sections would be consolidated and reorganized in a new chapter 465, which would be created to contain all rules related to NSR.

This rule making will address some of the issues discussed later in this plan, especially consolidation and *de minimis*. Future rulemakings may be anticipated that will address more of the substantive issues that require more time to develop or are conceptually distinct.

The meanings of abbreviations and acronyms are provided in appendix A.

Legislative and Regulatory History

The public policies and purposes of the Washington Clean Air Act were established in 1967, and most recently amended in 1991. RCW 70.94.011 provides that protection of public health is the policy of the state of Washington.

“It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of state-wide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal Clean Air Act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington’s inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.”

State agency rule writing general authority was established under the Act in 1967, and most recently amended in 1991. RCW 70.94.331(2)(c), states that Ecology shall:

“adopt by rule, air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.”

The 1990 amendments to the federal Clean Air Act established numerous requirements for a nationwide strategy for reducing toxic air pollution. Many of the requirements are to be implemented by state and local authorities, upon receiving approval from the EPA. Among the provisions describing the nationwide toxics program is section 112(b), which lists 190 toxic chemicals to be addressed by the program. The 1991 Washington Clean Air Act amendments affected several provisions of the rule governing sources of toxic air pollution.

RCW 70.94.152, first enacted in 1967, and last amended in 1993, provides for NSR as follows:

“(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources

* * *

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. . . .

* * *

(10) Best available control technology (BACT) is required for new sources except where the federal clean air act requires compliance with the lowest achievable emission rate (LAER).”

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimus new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimus new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment.

The NSR general regulations at WAC 173-400-110 were first filed in December of 1976, and last amended effective January of 1998. WAC 173-400-110(5) provides that *de minimis* exemption levels for toxic air pollutants are specified in WAC 173-460, but there are no *de minimis* exemptions in WAC 173-460. The change in WAC 173-400-110 anticipated this current rule change.

The NSR toxic air pollutant regulations at WAC 173-460 were first effective in September 1991. Amendments were last adopted January 12, 1994. Ecology has imposed upon itself the requirement to review the ASILs. WAC 173-460-120(1) states:

- (a) To use the best available scientific information, ecology shall conduct an ongoing review of information concerning whether to add or delete toxic air pollutants to WAC 173-460-150 or WAC 173-460-160, what acceptable source impact levels should be used to review emissions of TAPs, source applicability and exemptions.
- (b) A complete review shall be made at least once every three years at which time ecology shall consider scientific information developed by the E.P.A., Washington department of health, other states or other scientific organizations, scientific information provided by any person, and results of second tier analyses evaluations.

Significant amendments must be consistent with the principles and objectives of Office of the Governor Executive Order 97-02 on regulatory improvement. The evaluation criteria are need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. This rule amendment must be developed consistent with the executive order.

Purpose

The initial impetus for this rule writing is to provide for the *de minimis* exemptions in WAC 173-460 that are called for by the recent amendment to WAC 173-400-110(5), and mandated by RCW 70.94.152(11). Beyond to addressing *de minimis*, the main purposes of the current proposal are to amend WAC 173-460 and -400, to make editorial changes for clarity, to consider new control technology requirements, to consolidate the NSR rules into a new chapter, and to consider routine updates to the ASILs.

Issues

This rule making will address five issues: consolidation, clarification, and repeal of New Source Review for criteria and toxic air pollutants currently in WAC chapters 400 and 460 into new chapter 465; incidental changes to WAC chapters 173-400, -401, -405, -415, -434, -490, & -491; adoption of *de minimis* exemptions levels for toxic air pollutants; adoption of new control technology requirements; modification of small quantity emission rates; and, routine update of ASILs.

There are many issues raised of concern to those who use the rule. They can not all be carried through to resolution in this rule making. Some may require technical assistance from the proponent or other practitioners that is not available. Some may be deferred to later rule makings or later phases of this rule making because more time and resources are required for their resolution.

There may be some suggestions that Ecology disagrees with. There is an implicit burden on the proponents of these issues to provide the support necessary for their resolution.

A practical first phase of revising NSR would include the consolidation, most of the editorial changes, and the substantive change of providing for toxic pollutant *de minimis*. This way, it would be understood that all but one of the changes would be intended to be editorial. The one exception needs to be included without delay because of the groundwork laid by the criteria pollutant *de minimis* rule revision of Dec. 23, 1997.

Consideration of other rule revisions may continue in parallel, and another rule-writing may immediately follow the first. These would be the other issues listed below. All the issues are summarized below, including those that could be included in follow on rule development.

1. four existing control technology requirements

Should Ecology update any of the four existing control technology requirements in WAC 173-460-060? These requirements constitute “generic BACT” for petroleum solvent dry-cleaning, abrasive blasting, chromic acid plating, and solvent metal cleaners.

2. more control technology requirements

Should Ecology include more control technology requirements in WAC 173-460-060, setting up generic requirements for small sources so they do not have to do anything else? Implementing any of these suggestions would require substantive input from the proponents and knowledgeable practitioners.

- wood stripping
- welding
- Consider references to MACT and NESHAPS standards
- portable fertilizer plants
- ethylene oxide sterilizers

3. categorical exemption from ambient impact analysis

Should sources with control technology requirements under WAC 173-460-060 be categorically exempt from all ambient impact analysis? WAC 173-460-030(2)(c) presently exempts four technologies. This differs from the general scheme, where ambient impact analysis is required even after BACT for TAPs is applied. E.g., is there any assurance that a dry cleaner would have insignificant residual risk if it applies the designated technology?

- a) Should a generic ambient impact analysis be a condition to adopting such “generic BACT?”
- b) Should the authority reserve the right to require ambient impact analysis at its discretion?
- c) Should applicability of generic BACT be limited under certain conditions such as size or location) expressed in the rule?
 - exempt auto body spray booths less than 10 tpy
 - exempt boilers fueled on natural gas or low sulfur fuel (less than 0.05%)
 - exempt asphalt plants

- exempt gas or oil heaters less than 2 mmBtu/hr
- exempt rock crushers
- exempt wastewater treatment plants - Chloroform only
- exempt landfills - Hydrogen sulfide
- exempt small paint booths less than 5 tpy of VOCs
- exempt gasoline storage and dispensing operations
- exempt graphic arts systems
- exempt can and paper coating operations
- exempt polyester/vinylester/gelcoat/resin operations
- exempt ethylene oxide sterilizers
- exempt coating and ink manufacturing
- eliminate exemption for tanks

Should Ecology eliminate the exemption for tanks under 173-460-030(2)(a) because all active tanks will vent directly or indirectly? The MACT and NESHAPS standards apply to tanks larger than 10,000 gallons (MACT standards for chromium and vapor degreasers applies to smaller tanks.)

4. ongoing review

Should Ecology remove its self-imposed requirement to review TAPs, ASILs, and source applicability? This is in WAC 173-460-120. The Washington CAA does not require this. The Dept. of Ecology AQP does not presently devote the considerable resources necessary to do this. As it is, ASILs are incorporated from other lists. The Dept. does not even have a process for tracking or incorporating revisions from these sources. Such an administrative updating mechanism would be the first step. Reviewing individual ASILs would be a second, technical procedure.

5. compounds in the table without ASILs

How should permit writers address compounds in the table that do not have ASILs? Permit writers generally ignore a toxic when it doesn't have an ASIL. The options are:

- a) give the compounds an ASIL,
- b) take them off of the table, or
- c) state that an ambient assessment (tier-1 or tier-2) does not have to be made for compounds without an ASIL.

The third option may be most practical for this rule making effort.

6. updating existing numbers

Should Ecology update the existing ASILs. Most all of the numbers were incorporated from other sources? Updating would involve determining the basis for each number in the table, and whether that basis has changed. If this is to be done, resources would have to be provided. The product would be a permanent mechanism for administratively updating the numbers as the sources of the numbers are revised. ASILs are calculated from numbers found in the following:

- IRIS for class-A TAPs
- IRIS for class-B TAPs

- TLV for class B TAPs not found in IRIS
- other

7. changing existing numbers

Should Ecology add, remove, or change particular ASILs. Some of these would require substantial involvement of technical specialists to justify variance from the existing sources of the numbers? Only in rare and special circumstances would Ecology have the resources to independently evaluate any particular number. WAC 173-460-120 requires this sort of review.

- chemicals with ASIL greater than 250 $\mu\text{g}/\text{m}^3$ (24 hour average)
- groups of chemicals instead of specific compounds

The toxic list contains groups of chemicals instead of specific compounds, for example, arsenic compounds and glycol ethers. These groups of chemicals should be broken down into the specific compounds whenever possible for example: arsenic pentoxide, and arsenic trisulfide.

- zero as ASILs for Persistent Bioaccumulative Toxics

Should Ecology consider zero as ASILs for Persistent Bioaccumulative Toxics (PBTs) (or Bioaccumulative Chemicals of Concern-BCCs) or otherwise accomplish phaseouts for these substances through the rulemaking?

- health impacts associated with prenatal and childhood exposures

Should Ecology address health impacts associated with prenatal and childhood exposures?

- full range of noncancer health impacts

Should Ecology address the full range of noncancer health impacts, including for example, hormone disruption?

- 8-hour ASIL for nonresidential neighborhoods

Should Ecology add an 8-hour ASIL for nonresidential neighborhoods? Creating an 8hr ASIL would complicate the tier-1 analysis. Receptor location can be addressed in tier-2 under the existing rule.

8. compounds regulated under FCAA 112(r) accidental release prevention program

Should Ecology should include on the ASIL list the list of compounds identified for regulation through the accidental release prevention program of FCAA 112(r), due late 1994? This issue was identified in the Dept. of Ecology's response to a comment on the 1994 revision to WAC chapter 173-460. Negative commentary indicates that this issue should be dropped.

9. move SQERs into the master table

Should Ecology move the SQERs into the master table? Each chemical would have its own SQER, calculated from the ASILs and a set of conservative, yet realistic SCREEN-3 input parameters.

10. unified table

Should Ecology combine all the ASIL tables into a single unified table? These changes would be editorial, not substantive. This would eliminate double entries. The combined tables would not be entirely unlike those of Puget Sound Air Pollution Control Agency's Regulation III, although more columns would be necessary for SQER, etc.

11. consolidate all new source review

Should Ecology combine all new source review into its own chapter? This new chapter 460 could include the following. This would include major and non-major source NSR for criteria pollutants and TAPs. This would include PSD, NSPS, and NESHAPS.

The rule-writer plans to clarify and consolidate the applicability and exemptions criteria of WAC 173-460. These changes would be editorial.

12. industrial classifications

Should NSR for TAPs be required within all industrial classifications? See WAC 173-460-030(1)(i). (Note that the U.S. Census Bureau is converting from the SIC system to the NAICS.) This would be in line with NSR for criteria pollutants. This would not change the substance of the rule if exemptions for industries are specified where appropriate. Identifying those industries for which exemption is appropriate would require stakeholder recommendations.

13. move WAC 173-460-090(3)(ii) to -100

Should Ecology move WAC 173-460-090(3)(ii) to -100? The subject matter would seem to be more coherent this way.

14. Definitions

Should Ecology choose between uniform use of either the term “contaminant” or the term “pollutant?” This would clarify the rule, without changing its substance. The Washington CAA uses the term “contaminant” while the federal CAA uses the terms “pollutant”. The EPA regulations use the terms of the Federal CAA, while the WAC uses “contaminant” and “pollutant” interchangeably.”

Should Ecology include definition for "asphalt fumes" and test methods to be used to measure asphalt fumes?

Should Ecology update the definitions of Class A and B. The Class A and B definitions need to be updated?

Should Ecology define “all known available and reasonable technology?” The term is used in WAC 173-460-100(3)(a) and (3)(b).

Should Ecology define “substantial alteration?”

Should Ecology define “similar parts replacement?”

15. Pollution Prevention

How can pollution prevention be encouraged by explicit provisions in the rule?

Should Ecology add WAC 173-460-100(4) to 173-460-090? This provision allows for voluntary further exposure reduction.

16. TAPS de minimis

Should Ecology adopt *de minimis* levels for TAPS? (*De minimis* means “concerning trifles.”) An unimplemented decision to do so is manifested in a cross reference in the table at WAC 173-400-110(5)(d). This “exemption threshold table” includes levels for criteria pollutants, but only a cross-reference to nonexistent levels for TAPS. If so, should there be an agency processing fee?

17. streamline/simplify tier-2

Should Ecology streamline or simplify tier-2? There is some vague dissatisfaction with the tier-2 process. It may be misunderstood. It is an expensive process that may not provide added value to the permit. It may not change the permit. More specific examples and information on the frequency of such instances would be useful.

To justify streamlining, the rule writer needs something more than allusions. The rule writer needs case histories, examples, and numbers. E. g, how many NOCs are there, how many go to Tier-2, and how many change as a result?”

18. Class B tier II

Should Ecology provide for class B TAPs in tier II? Presently, the Tier II process only explicitly addresses the cancer risk from Class A TAPs.

19. modify applicability and exemptions

Should Ecology change the applicability and exemptions criteria of WAC 173-460? These changes would be substantive.

- radionuclides
- exempt R&D and laboratories

Should Ecology exempt R&D and laboratories? They use small amounts of many chemicals in unpredictable ways.

20. clarify NSR requirement for existing sources and modifications

Should Ecology clarify NSR requirement for existing sources and modifications? What is the problem, and how could it be fixed?

21. emission estimates based on inventory records and mass balance assumptions

Should Ecology explicitly allow emission estimates to be based on inventory records and mass balance assumptions?

22. clarify federal enforceability

Should Ecology clarify federal enforceability?

23. clarify local authority

Should Ecology clarify local authority?

24. fees

Should Ecology change "ten thousand dollars" to "up to ten thousand dollars?" This will allow Ecology to charge less than the maximum for simple modifications and/or administrative modifications. The amount charged to process permit applications should reflect the amount of resources expended by Ecology.

Related Federal and State Requirements

Applicable Federal Rule

New source review is a state program. It is related to the federal PSD program. The federal program generally applies to major facilities, while the state program includes others.

Conflicts with Other State or Federal Statutes or Regulations

The state program is more inclusive than the federal program.

SEPA Compliance

The rule maker intends to contact Barbara Ritchie of the State Environmental Policy Act (SEPA) unit. SEPA requires the rule maker to complete an environmental checklist and make a determination of significance or nonsignificance. In the case of significance, the rule maker must complete an Environmental Impact Statement. The rule writer intends to conduct the SEPA and APA public processes concurrently to the extent possible.

Chapter 460 was first promulgated in 1991 under a DNS. All amendments to chapter 460 have been under DNSs. Therefore, these proposed amendments are expected to be promulgated under a DNS.

Assistant Attorney General Involvement

Mary Sue Wilson is the lead Assistant Attorney General representing the AQP. The rule-writer intends to contact her with questions of legal interpretation, and to apprise her at key points in the rule development process.

Pilot Program and Testing

A pilot program for implementing parts of the rule may be infeasible depending upon the nature of any proposed changes. The appropriateness of such an approach would have to be examined after Ecology decides on the kinds of changes to be made to the rule.

Pollution Prevention and Resource Conservation

Pollution Prevention

Ecology staff with pollution prevention duties have been invited to participate. Hugh O'Neil organized a meeting of potentially interested staff for January of 1999. The rule writer intends to strive to make pollution prevention a real goal of the rulemaking through appropriately forceful rule language.

Resource Conservation

Resource conservation would be addressed incidental to pollution prevention.

Pollution Prevention Disincentives

Disincentives are not apparent to the rule maker.

INTERNAL COORDINATION

Cross Program Coordination

Ecology staff with pollution prevention duties have been invited to participate, as discussed above.

The rule writer intends to notify Ecology staff with hazardous waste cleanup and management duties. They may be particularly interested in WAC 173-460-030(1)(b)(iii)(B). The following Ecology staff has such duties:

- Greg Sorlie of Hazardous Waste and Toxics Reduction Program

Regional Office Coordination

AQP staff in Ecology's regional offices would implement these rule amendments, and staff may have concerns about any changes in interpretation of the statute or policy that will allow more toxics emissions or place additional demands on their limited resources. Therefore, the rule writer intends to keep regional contacts informed and involved in the rule development process, at least one AQP regional staff person having the opportunity to represent AQP regional offices. To date, interest was expressed by the following regional staff:

- Greg Ryan of ERO
- Bob Swackhamer of CRO.
- Sue Billings of CRO
- Alan Butler of NWRO

EXTERNAL COORDINATION

Tribal

How will the rule affect tribal governments?

The rule would not affect tribal governments. Tribal governments generally assert jurisdiction over all sources within the exterior boundaries of their reservations, as well as certain trust lands outside the boundaries. The EPA fosters this assertion. The AQP does not make a practice of regulating sources in areas over which tribes assert jurisdiction.

Tribal coordination

The state and almost every tribe in the state entered the *Centennial Accord*, which laid a foundation for state-tribal relationships. The *Accord* would guide tribal coordination during this rule making. The nature of the relationships between the state and each tribe is government to government.

Local Government

Local governments will potentially be affected. The local air authorities, other than the Ecology regional offices, are local governments. Local air authorities have responsibility for administering the program in their area. Changes in the rule could affect how these agencies meet such responsibilities. The rule maker intends to have at least one representative from this type of local government on the advisory committee. The rule writer intends to plan to advise all such agencies of any specific changes agreed to by the committee so they will have an opportunity to comment. To date, interest was expressed by the following local air authority staff:

- Maggie Corbin of PSAPCA
- Scott Inlows of SWAPCA
- April Miller of SCAPCA

Other State and Federal Agencies

Other State Agencies

The Department of Health has the opportunity to participate.

- Denise La Flamme, WDOH

Effect on Other Regulatory Programs

Except as noted above, this rule amendment is not expected to affect other state or federal regulatory programs. Nevertheless, the rule writer intends to notify other agencies and jurisdictions of its plans to amend the rule. If any such agencies or jurisdictions indicate that they will be affected, the rule writer intends to consider convening a temporary agency rule coordinating committee of representatives from such agencies or jurisdictions in accordance with governor's executive order 93-06.

Revisions to NSR regulations necessitate updating the SIP. SIP updates require a public involvement process similar to that for the underlying rule-making. The rule writer intends to conduct the two processes in conjunction with each other to eliminate unnecessary multiplicity.

Impact on Federal Agencies

Federal agencies that emit pollutants will be affected in the same manner as other members of the regulated community. They will be subject to the rule amendments if they are in Ecology's jurisdiction or the jurisdiction of a local agency that uses Ecology's rules. There need not be any special outreach to authorities that regulate federal facilities because the proposed rule amendments have no special provisions for federal facilities. The AQP has no plans for a special effort to reach federal agencies. EPA Region 10 staff will be consulted if the AQP decides to adopt the revised rule in the Washington State Implementation Plan for Air Quality. To date, the rule writer has contacted the following regional staff:

- Andrea Wullenweber of EPA

Stakeholder Strategy

Outreach to potential advisory committee members resulted in mixed reactions. These included non-response, "understaffed," "keep me informed," and "sign me up." Those willing and able to participate did not comprise a complete cross-section of interests. Therefore, an advisory committee is not presently warranted, but could be formed at a later date if the rule writer determines that stakeholder interest warrants it.

Those who have expressed interest have ongoing opportunities to contribute, from the scoping phase through adoption. The process is already ongoing, people are already involved, and we are open to anyone else providing insight and comments. The best way to begin involvement is by reviewing the information found through the internet at

http://www.wa.gov/ecology/leg/wac_173460/nsr_intro.html. The rule writer intends to also disseminate information and updates through e-mail and U.S. mail.

Various special interest meetings could be held with the various stakeholders. For example, sessions have been held at the quarterly permit engineers' meetings. It may also be appropriate to offer stakeholders the opportunity to meet in person to engage in dialogue with each other. The rule writer should organize such meetings if there is broad demand or it is necessary to resolve issues.

The rule writer intends to handle the amendments in phases. The first would consist of the considerable editorial effort of combining toxic and criteria NSR into one chapter. This editorial effort would necessitate resolving some substantive issues, but would avoid changing existing NSR. *De minimis* must be addressed at the beginning. The second phase would address more proposals for substantive changes to NSR. These substantive changes would be made to the edited text, and the result would be filed with the CR-102.

Negotiated Rule Making

The process is not labeled as a negotiated rule-making in the CR-101 form. This is because the rule writer believes that the rule-making process described above will provide opportunity for all interested parties to participate in the rule-making effort prior to publication of the proposed rule, as required by RCW 34.05.310. The complications inherent in such comprehensive amendments as are proposed here require involvement to ensure that the final product is as good as can be. Also, the criteria in the Rule Development Manual are not met.

Ensure Clear Rule

An important goal of this rule-making is to write the revised rule in clear English. The rule writer intends to consult with Kathy Carpenter, Ecology Rules Unit.

Public Involvement Plan

Who is affected by changes to the NSR rule?

The proposed changes to the NSR rules would affect the same persons as would be affected under the existing NSR rules. Owners and operators of new sources are affected by NSR rules.

How are they affected?

The proposed changes that may affect owners and operators of new sources include:

- *De minimis* levels would provide the smallest potential new sources a clear exemption from NSR.
- Revisions to tier-2 would aid NSR for larger new sources exceeding ASILs.

When should these stakeholders be involved?

The rule writer intends to encourage all stakeholders to become involved by getting on Ecology's mailing list to receive notice when information and drafts of the rule are available. Stakeholders may volunteer to be a formal advisory committee member representing a group of stakeholders, should one be broadly deemed necessary

How should the stakeholders be involved?

All stakeholders can be involved by reviewing and commenting on all information and drafts of the rule. Issues will generally be developed and resolved through written communication, primarily e-mail. The rule writer will coordinate and redistribute the communications to lay out the issue, identify the interested people, and strive for resolution. The rule writer intends to only call meetings when necessary to resolve issues that have reached a threshold where the intimacy of face to face communication would specially benefit the result. The goal of this approach is to provide all interested parties equal opportunity to be involved, to minimize the burdens of being involved, and to more quickly progress towards a final rule.

Who would be kept informed about the rule amendment and how?

The rule writer intends to provide all stakeholders who ask to be kept informed with information about meetings, notice of any public meeting, workshops, or hearings, if and when any such events are scheduled and/or drafts of the proposed rule are available, copies being provided through direct mailings, postings on Ecology's Internet Web site, or e-mail. Changes to postings on the Web site would be announced by e-mail to everyone on the e-mail list.

ECONOMIC ANALYSIS

Benefits/Costs

RCW 34.05.328 requires Ecology to conduct a cost benefit analysis before this rule is adopted. This would allow Ecology to determine (1) whether the benefits of the rule are greater than its probable costs, taking into account both qualitative and quantitative benefits and costs and the specific directive of the statute, and (2) whether the rule is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute. These determinations must be positive for the rule to be adopted.

Brian Calkins, economist for the Air Quality Program, was contacted as the first choice to coordinate preparation of the analysis. The analysis should begin by the time that the CR-102 is filed.

Economic Impact Compliance

Ecology must prepare a Small Business Economic Impact Statement (SBEIS) before filing a proposed rule amendment if the proposed rule will impose more than minor costs on business in an

industry. The rule writer intends to consult with Brian Calkins and the Rules Unit before filing a CR-102 to determine whether an SBEIS is required.

IMPLEMENTATION

External Implementation

Rule Implementation and Enforcement

The AQP will develop an implementation plan before any revisions to the NSR rules are adopted. The plan will provide for implementation and enforcement by all agencies that issue NOCAs

Communicating Rule to Affected Parties

Once the final rule is adopted, the AQP will prepare fact sheets about the new rules that can be provided to all interested parties. The fact sheets will explain the major changes to the rule and let people know they can request copies.

Voluntary Compliance

These proposed amendments represent refinements to an ongoing program. Therefore, compliance is not expected to be a concern.

Coordination with Other Agencies

The Department of Health has the opportunity to participate on the advisory committee. Denise La Flamme would be the appropriate participant.

Measuring Results

Here are some possible measures of success of this rule writing which could be used if there is sufficient interest expressed or the need arises:

- Reduction in the overall length of the NSR regulations.
- Incorporation of *de minimis* levels into NSR.
- Perceived simplification of NSR.

Internal Implementation

Staff Time and Resources Required to Implement

The rule writer does not expect that there will be an increase in staff time and resources required to implement the amended NSR rules. This is because the NSR program already exists, and these proposed amendments would not add new regulatory programs.

Any change in the wording of regulations would require some level of adjustment. The rule writer expects that simplification, streamlining, and *de minimis* features of this rule writing will more than offset any adjustment to change by reducing effort thereafter.

Agency/Program Implementing the Rule

The rule would be implemented as it is currently, by local air authorities, including Ecology regional offices.

ADMINISTRATIVE

Staff Time and Resources Required

Staff/Cost Classification	Percent FTE	Cost (for 12 months)
ES3	1.0	\$52,065
EEOS	0.2	\$8,976
ECON III	0.1	\$6,344
Management (various)	0.05	\$3,333
Total Labor ¹	1.35	\$70,718
Materials ²	--	\$25,897
Total Cost	--	\$96,615

The rule revision process is expected to take eighteen months. Consequently the labor cost is derived by taking the annual salary and benefits for each individual and multiplying by the percent of each individuals time spent on the project.

Timeline

GOAL	TARGET DATE
Rule Development Plan: Tami Dahlgren, Jerry Thielan, and Mary Burg review and approve	July 13, 1999
CR 101: Rules coordinator reviews, Program Manager signs, Rules coordinator files, and OCR publishes in State Register	September 15, 1999
SEPA: Program manager approves environmental checklist and DS/DNS	October 10, 1999
draft rule: submit to OTS (753-6641)	January 23, 2000
SBEIS: draft	September 28, 2000
CR 102: Rules coordinator reviews, Program Manager signs, Assistant Director signs, Rules coordinator files, and OCR publishes in State Register	November 7, 2000
Hearing	November 26, 2000
Comment period: ends	December 2, 2000
Concise Explanatory Statement: complete	December 10, 2000
Cost/Benefit Analysis: draft	December 24, 2000
Least Burdensome Alternative: draft	January 7, 2001

¹ This includes both salary and benefits.

² This is 36.62% of the labor cost and includes indirect costs, goods and services, travel, and equipment.

OTS: contact with final rule revisions	January 27, 2001
Implementation Plan: file with Rules Coordinator	January 30, 2001
CR 103: Rules Coordinator reviews, Program Manager signs, Rules coordinator forwards for Directors signature, and Rules Coordinator files with OCR	February 5, 2001
Format, print, and distribute rule	March 5, 2001

Public Involvement Strategy Worksheet: Changes to NSR

Objective	Audience	Action	Action Target Date	Product	Product Target Date	Staff
Inform stakeholders of plan to amend rule and invite their participation	Stakeholders	<ul style="list-style-type: none"> • Reach out to prospective interested people 	July, 1998	<ul style="list-style-type: none"> • Initial contact list 	Nov., 1998	Cross
Inform stakeholders of plan to amend rule and invite their participation	Stakeholders	<ul style="list-style-type: none"> • Publish CR-101 in State Register 	Sep., 1999	<ul style="list-style-type: none"> • CR-101 Form 	Sep., 1999	Cross
Involve stakeholders in rule development	Stakeholders	<ul style="list-style-type: none"> • Solicit and consider comments 	Sep., 1999	Draft rule amendments	Jan., 2000	Cross
Prepare proposed rule, notify stakeholders and the public of content, and solicit comments.	Stakeholders Public	<ul style="list-style-type: none"> • Publish rule in Wash. State Register • Distribute focus sheet or other summary of rule 	Feb., 2000	<ul style="list-style-type: none"> • Proposed rule • CR-102 form • Focus sheet or other summary of proposed rule 	Feb., 2000	Cross Norman
Participation in hearings and written comments on rule.	Stakeholders Public	<ul style="list-style-type: none"> • Distribute hearing notice • Hold public hearings 	Nov., 2000	<ul style="list-style-type: none"> • Hearing notice • Public hearings 	Nov., 2000	Norman
Respond to stakeholder and public comments	Stakeholders Public	<ul style="list-style-type: none"> • Distribute Concise Explanatory Statement 	Dec., 2000	<ul style="list-style-type: none"> • Concise Explanatory Statement 	Dec., 2000	Cross
Inform stakeholders/ public of final rule amendment	Stakeholders Public	<ul style="list-style-type: none"> • Publish rule in Washington State Register 	Feb, 2001	<ul style="list-style-type: none"> • Final rule • CR-103 Form 	Feb., 2001	Cross