



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (June 2004)**  
**(Implements RCW 34.05.310)**  
Do **NOT** use for expedited rule making

**Agency:** Energy Facility Site Evaluation Council

**Subject of possible rule making:** This rulemaking proposes to adopt requirements for mercury emissions from coal-fired power plants into Title 463 WAC. The requirements may be incorporated into WAC 463-78, or into a separate new chapter. The new federal Clean Air Mercury Rules (CAMR) establish a national cap on mercury emissions and give each state a mercury budget. States may adopt the federal rules or they may adopt rules that are more stringent. The rulemaking will establish Washington State requirements in place of the federal rule. The rulemaking will consider opting out of mercury trading and establishing emission standards through a phased approach. This rulemaking will establish a methodology to distribute allocated mercury emission credits in Washington State.

This rulemaking will also replace EFSEC's current adoption of WAC 173-406 Acid Rain Program Requirements with adoption of the federal requirements for the Acid Rain Program by reference. This rule may also adopt by reference requirements for new coal fired electrical generating units under the NSPS program, with adoption of more stringent requirements being considered.

**Statutes authorizing the agency to adopt rules on this subject:** RCW 80.50.040 (1) and (12).

**Reasons why rules on this subject may be needed and what they might accomplish:** These rules will implement the federal CAMR adopted by EPA in May 2005. The federal rules have state air agency requirements that begin in 2006 and source specific requirements that begin in 2009. EPA's rules will apply in Washington if the state fails to adopt its own rules by November 2006. EFSEC intends to complete the rulemaking process as soon as possible, knowing that the state rules will substitute for the federal rules once EPA approves them. The rules will establish EFSEC's procedure to distribute mercury emission credits to coal-fired power plants and determine when emissions trading will and will not be allowed in Washington. Establishing a stringent emission limit would be part of the mercury emissions distribution plan.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** EFSEC will coordinate directly with EPA Region 10, Ecology, and CTED. They will be part of the stakeholder group assisting with the rule development effort. Ecology has independent authority to regulate certain new energy facilities in Washington State. EFSEC and Ecology will be working closely with each other to propose rules in tandem that represent the Washington State approach to regulating mercury emissions from existing and future coal-fired electrical generating plants.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

Amendments to the rule will be drafted and reviewed internally and by an advisory group. The public will be provided with the opportunity to comment on the proposed rule. At least one public hearing will be held. The proposed amendments will be posted on EFSEC's website and will be distributed to EFSEC's rulemaking mailing list.

**How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:**

EFSEC will mail and e-mail information and notice of public hearings in this matter to persons on EFSEC's rulemaking list. To be added to this list interested persons should send a request to [efsec@ep.cted.wa.gov](mailto:efsec@ep.cted.wa.gov) or call 360-956-2121. EFSEC will discuss draft and proposed rules at its monthly Council meetings that are open to the public. For meeting dates and locations go to [www.efsec.wa.gov/meet.html](http://www.efsec.wa.gov/meet.html) or call 360-956-2121. For specific information about this rulemaking contact: Irina Makarow, EFSEC, P.O. Box 43172, Olympia, WA 98504-3172, Phone: 360-956-2047, E-mail: [irinam@ep.cted.wa.gov](mailto:irinam@ep.cted.wa.gov).

<b>DATE</b> August 14, 2006
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