



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 22, 2021

TIME: 2:14 PM

WSR 21-13-153

Agency: Department of Ecology AO # 20-04

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR _____ ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

Ecology is revising two rules:

- Chapter 173-423 WAC, Low Emission Vehicles. The rule implements the California Advanced Clean Cars Program that combines the control of smog-causing (criteria) pollutants and greenhouse gas (GHG) emissions into a coordinated package of regulations.
- Chapter 173-400 WAC, General Regulations for Air Pollution Sources – specifically section 025, Adoption of federal rules. This section adopts federal rules by reference mentioned in the chapter.

This rulemaking meets the criteria to file a rule proposal notice without first filing a rulemaking notice (RCW 34.05.310(4)(e)).

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-423-400>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
July 27	1:30 p.m.	Webinar	<p>Virtual presentation, question and answer session followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=eb0aec95dcf9d08a7d51e4c900b2dc180</p> <p>For audio call US Toll number 1-855-929-3239 and enter access code 133 161 6550. Or to receive a free call back, provide your phone number when you join the event.</p>
July 29	6:00 p.m.	Webinar	<p>Virtual presentation, question and answer session followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=e5edde214b35d76efe04ae62b78c09c95</p>

For audio call US Toll number 1-855-929-3239 and enter access code 133 423 8126. Or to receive a free call back, provide your phone number when you join the event.

Date of intended adoption: November 29, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Elena Guilfoil

Address: Send US mail to:

Department of Ecology

Air Quality Program

P.O. Box 47600, Olympia, WA 98504-7600

Or

Send parcel delivery services to:

Department of Ecology

Air Quality Program

300 Desmond Dr. SE, Lacey, WA 98503

Email: Submit comments by mail, online, or at the hearing(s).

Fax: N/A

Other: Online: <https://aq.ecology.commentinput.com/?id=SdA6s>

By (date) August 9, 2021

Assistance for persons with disabilities:

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: For Washington Relay Service call 711; For TTY call 877-833-6341.

Email: ecyADAcoordinator@ecy.wa.gov

Other: Visit <https://ecology.wa.gov/accessibility> for more information.

By (date) July 20, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Amending Chapter 173-423 WAC Low Emission Vehicles

Washington is expanding our program by adopting California's more protective vehicle emission standards for new vehicles – starting with model year 2025 and later – sold in Washington. Motor vehicles are the largest source of air pollution in Washington. Transportation contributes about 22 percent of total air pollution and 45 percent of greenhouse gas emissions throughout the state.

Washington's current program includes requirements for low emission vehicles:

- Passenger cars: vehicles designed to transport up to 12 people
- Light-duty trucks: vehicles weighing less than 8,500 pounds
- Medium-duty passenger vehicles: vehicles weighing less than 10,000 pounds designed to transport people

This rulemaking expands vehicle emission standards to include:

- Zero emission vehicle (ZEV) requirements that apply to passenger cars, light-duty trucks, and medium-duty vehicles (vehicles with a gross vehicle weight rating between 8,501 and 14,000 pounds).
- Zero-emission vehicle (ZEV) requirements that apply to vehicles greater than 8,500 pounds gross vehicle weight rating.
- Low emission vehicle requirements that apply to medium-duty vehicles.

Zero emission vehicles (ZEV) – passenger cars, light-duty trucks, and medium-duty vehicles

The rule proposes to adopt California's ZEV emission standards that apply to passenger cars, light-duty trucks, and medium-duty vehicles (vehicles with a gross vehicle weight rating between 8,501 and 14,000 pounds such as trucks, SUVs, and vans). This program will expand ZEV options for consumers to buy in Washington. Right now consumer ZEV choices are limited in Washington.

Automakers must meet a sales requirement – through a credit system – starting with model year 2025. The sales requirement means that out of the total number of new vehicles an automaker sells in Washington, about eight percent of those must meet zero emission vehicle standards. Automakers that do not meet their sales requirement can:

- Buy or trade credits from another automaker
- Pay a penalty

The rule does not provide credits for vehicles before model year 2025 that are sold in Washington. Current and projected ZEV sales in Washington show that demand is expected to meet the sales requirement of eight percent.

Vehicle technologies that earn credits to help automakers meet the ZEV requirements include:

- Battery-powered electric vehicles
- Plug-in hybrid electric vehicles
- Fuel cell electric vehicles – which run on compressed liquid hydrogen

Zero-emission vehicles (ZEV) – vehicles greater than 8,500 pounds gross vehicle weight rating

The rule proposes to adopt California's ZEV emission standards that apply to vehicles greater than 8,500 pounds gross vehicle weight rating. These are delivery vans, work trucks, long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles. California calls this the Advanced Clean Trucks Regulation. This program expands ZEV options for these vehicles for consumers to buy in Washington. Right now these ZEV options are limited.

Manufacturers must meet a sales requirement for Class 2b–8 vehicles starting with model year 2025. The sales requirement means that a certain percentage of these vehicles sold in Washington must be zero emission. Their annual ZEV sales gradually increase each year until 2035.

Manufacturers that do not meet their annual sales requirement must:

- Buy or trade credits from another truck manufacturer
- Pay a penalty
- Remove deficits within one year or pay an additional penalty

Vehicle technologies that earn credits to help automakers meet the ZEV requirements include:

- Battery-powered electric vehicles
- Plug-in hybrid electric vehicles
- Fuel cell electric vehicles – which run on compressed liquid hydrogen

Low emission vehicles – medium-duty vehicles

The rule proposes to adopt California's vehicle emission standards that apply to medium-duty vehicles with a gross vehicle weight rating between 8,501 and 14,000 pounds, such as trucks, SUVs, and vans. The rule expands Washington's program so it now includes California's complete low emission vehicles program. Currently, California and federal emission standards are the same for medium-duty vehicles.

Other changes

This rulemaking makes other edits identified or necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the program.

The proposed rule:

- Changes the name of the rule – Clean Vehicles Program – to reflect the expanded scope of the program.
- Deletes sections where content is relocated to Section 060 or information duplicates a California regulation adopted by reference:
 - WAC 173-423-050 Requirement to meet California vehicle emission standards
 - WAC 173-423-080 Fleet average nonmethane organic gas (NMOG) and NMOG Plus NOx exhaust emission requirements, reporting and compliance
 - WAC 173-423-090 Fleet average greenhouse gas exhaust emission requirements, reporting and compliance
 - WAC 173-423-100 Manufacturer delivery reporting requirements
 - WAC 173-423-110 Warranty requirements
 - WAC 173-423-120 Recalls
- Revises Section 030 Incorporation by reference:
 - Changes section title to Adoption by reference
 - Relocates adoption of California Code of Regulations to this section
 - Links the adoption date of California Code of Regulations to the date in WAC 173-400-235(1)
 - Clarifies the meaning of terms in California's rules
- Revises Section 040 Definitions by adding, removing, and editing definitions for clarity.
- Revises Section 070 Emission standards, warranty, recall and other California provisions adopted by reference:
 - Changes section title to Low emission vehicles
 - Relocates requirements for low emission vehicles located throughout the rule to this section and removes requirements that duplicate California's Code of Regulations
 - Changes section number to 060 because sections were deleted
 - Edits requirements for clarity
 - Deletes Table(1) and relocates adoption by reference of California Code of Regulations to Section 030

Amending WAC 173-400-025 Adoption of federal rules

The proposed rule:

- Updates the adoption date of federal rules in Chapter 173-400 WAC from January 24, 2018 to June 22, 2021. Until we update this adoption date, we can only enforce the federal rules as they existed on January 24, 2018. We cannot enforce any federal rule changes made after that date.
- Excludes PSD and major new source review changes promulgated in 85 FR 74890 (November 24, 2020). EPA adopted less stringent emissions accounting requirements so the rule retains the pre-2020 requirements.
- Adopts by reference a new federal rule for existing municipal solid waste landfills in 40 C.F.R. Part 62, Subpart OOO.
- Moves the adoption date to its own subsection to reduce rule maintenance in WAC 173-423-030.
- Changes the section title to “Adoption by reference” to align with the section title of WAC 173-423-030. Using the same section title in both rules reduces confusion.
- Edits requirements for clarity
- Makes other edits identified or necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the program.

Reasons supporting proposal: See answer to “Purpose of the proposal.”

Chapter 173-423 WAC reflects 2005 statutory authority (2005 c 295 Section 2) directing Ecology to:

- Adopt California’s vehicle emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles.
- Exclude zero-emission vehicle requirements.

2020 Legislation (2020 c 143 Section 1005):

- Adopts the California vehicle emission standards.
- Directs Ecology’s to adopt rules implementing California’s vehicle emission standards in Title 13, including the ZEV program.
- Directs Ecology to amend its rules to maintain consistency with California’s rules and 42 U.S.C. Section 7507 (Section 177 of the Clean Air Act).

42 U.S.C. Section 7507 allows states to adopt and enforce California’s vehicle emission standards if they are identical to the California standards. The Clean Air Act requires a state to provide manufacturers two-years’ advance notice by vehicle model year. The rule proposes to start with model year 2025 vehicles which could be available starting January 1, 2024.

Statutory authority for adoption: Chapter 70A.30 RCW, Motor Vehicle Emission Standards

Statute being implemented: Chapter 70A.30 RCW, Motor Vehicle Emission Standards

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: More information is available in the Determination of Nonsignificance and Environmental Checklist prepared to comply with the State Environmental Policy Act (SEPA). Refer to the rulemaking web page for a link to these documents: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-423>.

This rulemaking does not include California’s Heavy-Duty Omnibus Regulation because the rule is not yet final. California’s rule will update emission standards and other emission-related requirements for heavy-duty engines and vehicles (including long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles). Ecology intends to amend this rule again to maintain consistency with California’s rules once California has adopted theirs.

Public information sessions

Ecology is holding two online public information sessions to explain the proposed rule. The agenda is a presentation, followed by a question-and-answer session. To protect everyone’s health during the COVID-19 pandemic, we are only holding online meetings.

Tuesday, July 13, 2021

1:30 p.m. – 3:00 p.m.

Webinar (online only): Join online and see instructions.

<https://watech.webex.com/watech/onstage/g.php?MTID=eea3989f3fddc882ec4a5dbf5f058a37d>

To hear the webinar better or to call in only, use your phone (instead of the computer) to call 1-855-929-3239.

Thursday, July 15, 2021

6:00 p.m. – 7:30 p.m.

Webinar (online only): Join online and see instructions.

<https://watech.webex.com/watech/onstage/g.php?MTID=e7b6ed27617dabf165f4f835efe25af2a>

To hear the webinar better or to call in only, use your phone (instead of the computer) to call 1-855-929-3239.

To ask for ADA accommodation, email Margaret Plummer at margaret.plummer@ecy.wa.gov or call 360-407-7112, 711 (relay service), or 877-833-6341 (TTY) by July 8, 2021

Name of proponent: (person or organization) Department of Ecology Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Elena Guilfoil	Lacey	360-972-5166
Implementation:	Dustin Watson	Lacey	360-764-6785
Enforcement:	Dustin Watson	Lacey	360-764-6785

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: RCW 34.05.328 (5)(b)(v) exempts rules from a cost-benefit analysis when the content is explicitly and specifically dictated by statute. RCW 70A.30.010 directs Ecology to adopt rules to implement the motor vehicle emission standards of the state of California, including the zero emission vehicle program. The law also directs Ecology to amend its rules to maintain consistency with California's rules and 42 U.S.C. Section 7507 (Section 177 of the Clean Air Act). 42 U.S.C. Section 7507 allows a state to adopt and enforce vehicle emission standards if they are identical to California's standards.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Signature:

Date: 6/22/2021

Name: Heather Bartlett

Title: Deputy Director

