

## **Chapter 173-424 WAC Clean Fuels Program Rule**

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### **WAC 173-424-100 Purpose**

The purpose of this rule is to implement a Clean Fuels Program to reduce the life cycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in Washington according to the Transportation Fuel – Clean Fuels Program (Chapter 70A.535 RCW).

### **WAC 173-424-110 Definitions**

### **WAC 173-424-120 Abbreviations**

### **WAC 173-424-130 Applicability**

- (1) Except as provided in section Exemption, this rule applies to:
  - (a) Any transportation fuel, as defined in section WAC 173-424-110, that is sold, supplied, or offered for sale in Washington, and
  - (b) Any fuel reporting entity, as specified in section WAC 173-424-200 through 240, is responsible for reporting a transportation fuel in a calendar year.

- (2) **What types of transportation fuel are subject to this regulation?**

The types of transportation fuels this rule applies to include:

- (a) Gasoline
- (b) Diesel or diesel fuel
- (c) Fossil compressed natural gas (“Fossil CNG”), fossil liquefied natural gas (“Fossil LNG”), or fossil liquefied compressed natural gas (“Fossil L-CNG”);
- (d) Bio-CNG, bio-LNG, or bio-L-CNG;

- (e) Electricity;
  - (f) Compressed or liquefied hydrogen (“hydrogen”);
  - (g) A fuel blend containing greater than 10 percent ethanol by volume;
  - (h) A fuel blend containing biomass-based diesel;
  - (i) Denatured fuel ethanol (“E100”);
  - (j) Neat biomass-based diesel (“B100” or “R100”);
  - (k) Alternative Jet Fuel;
  - (l) Fossil LPG/Propane; and
  - (m) Any other liquid or non-liquid fuel.
- (3) Opt-in fuel
- (a) Each fuel in (b) of this sub-section is presumed to meet the carbon intensity standards (benchmarks) in WAC 173-424-910 (a) through (c) through December 31, 2038.
  - (b) A fuel provider for an alternative fuel listed below may generate CFP credits (credit under this rule) for that fuel only by electing to opt into the CFP as an opt-in fuel reporting entity pursuant to section 95483.1 and meeting the requirements of this rule.
    - (i) Electricity;
    - (ii) Bio-CNG;
    - (iii) Bio-LNG;
    - (iv) Bio-L-CNG;
    - (v) Alternative Jet Fuel; and
    - (vi) Renewable Propane or renewable LPG.
- (4) Annual carbon intensity benchmarks for an alternative fuel intended for use in a single-fuel vehicle.
- (a) Gasoline and gasoline substitutes. A regulated party or credit generator must comply with the benchmarks for gasoline and gasoline substitutes in WAC 173-424-910 Table 1 for alternative fuel intended to be used in a single-fuel light- or medium-duty vehicle.

- (b) Diesel and diesel substitute. A regulated party or credit generator must comply with the benchmarks for diesel fuel and diesel fuel substitutes in WAC 173-424-920 Table 2 for alternative fuel intended to be used in a single-fuel application other than a single-fuel light- or medium-duty vehicle.
- (c) Alternative Jet Fuel benchmarks. A regulated party or credit generator must comply with the benchmarks for alternative jet fuel or jet fuel substitutes in WAC 173-424-920 Table 3.
- (d) Carbon Intensity Benchmarks for Transportation Fuels Intended for Use in MultiFuel Vehicles. Ecology's credit and deficit calculations involving alternative fuel provided for use in a multi-fueled vehicle use:
  - (i) The benchmarks for gasoline set forth in WAC 173-424-910 Table 1 if one of the fuels used in the multi-fuel vehicle is gasoline;
  - (ii) The benchmarks for diesel fuel set forth in WAC 173-424-910 Table 2 if one of the fuels used in the multi-fuel vehicle is diesel fuel.

**WAC 173-424-140 Exemptions**

- (1) Exempt fuels
  - (a) The CFP does not apply to the following transportation fuels:
    - (i) Fuels supplied in Washington by all providers of that particular fuel for transportation use at an aggregated quantity of less than 360,000 gallons per year.
    - (ii) Conventional jet fuel or aviation gasoline
    - (iii) Any deficit-generating fuel in military tactical vehicles and tactical support equipment.
  - (b) The following transportation fuels are exempt from carbon intensity reduction requirements until January 1, 2028:
    - (i) Special fuel used in off-road vehicles used primarily to transport logs;
    - (ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on

highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and

(iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(c) Fuels listed under (a) and (b) of this section are eligible to generate credits.

(2) Exempt fuel uses. The CFP does not apply to any transportation fuel used in:

(a) Marine vessels, and

(b) Railroad locomotive applications.

### **WAC 173-424-150 General Requirements**

(1) Regulated party requirements

(a) The regulated parties for regulated fuels are designated under WAC 173-424-200

(b) Regulated parties must:

(i) Register (Online registration section);

(ii) Keep records (Records section);

(iii) Report quarterly and annually (Quarterly Progress Reports section and the Annual Compliance Report section); and

(iv) Comply with the Clean Fuel Standard for:

(A) Gasoline and gasoline substitutes in WAC 173-424-910 Table 1

(B) Diesel fuel and diesel fuel substitutes in WAC 173-424-920 Table 2

(2) Opt-in fuel supplier requirements

(a) An opt-in fuel supplier may voluntarily participate in the Clean Fuel Program according to WAC 173-424-240.

(b) An opt-in fuel supplier must:

(i) Register according to WAC 173-424-300;

(ii) Keep records as required under WAC 173-424-400;

(iii) Report quarterly and annually (Quarterly Progress Reports section and the Annual Compliance Report section); and

(c) The following sections of this chapter designate persons eligible to generate credits:

- (i) WAC 173-424-210 for fossil or bio-based compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas, and hydrogen;
  - (ii) WAC 173-424-220 for electricity.
- (3) Aggregator requirements
  - (a) Aggregators must:
    - (i) Register according to WAC 173-424-300;
    - (ii) Keep records as required under WAC 173-424-400;
    - (iii) Report quarterly as required under WAC 173-424-410; and
    - (iv) Report annually as required under WAC 173-424-420.
  - (b) Aggregators facilitate credit generation and trade credits only if a regulated party or an eligible credit generator has authorized an aggregator to act on its behalf by submitting an Aggregator Designation Form.
  - (c) Designation of aggregator:
    - (i) Aggregators facilitate credit generation and trade credits only if a regulated party or an eligible credit generator has authorized an aggregator to act on its behalf by submitting an Aggregator Designation Form. Aggregator designations may only take effect at the start of the next full calendar quarter after Ecology receives such notice.
    - (ii) The only exception to that designation by a credit generator is the backstop aggregator designated under WAC 173-424-220.
    - (iii) A regulated party or credit generator already registered with the program may also serve as an aggregator for others.
    - (iv) An aggregator must notify Ecology when a credit generator or regulated party has withdrawn designation of the aggregator. Aggregator withdrawals may only take effect at the end of the current full calendar quarter when Ecology receives such notice.
- (4) Registration requirements

A regulated party must submit a complete registration application to Ecology as required in WAC 173-424-300.

(5) Recordkeeping requirements

Regulated parties, credit generators, and aggregators must develop and retain all records as required in WAC 173-424-400.

(6) Quarterly progress report

Each regulated party, credit generator, and aggregator must submit quarterly reports under WAC 173-424-410.

(7) Annual compliance report

Each regulated party, credit generator, and aggregator must submit an annual report under WAC 173-424-420. Each regulated party must submit an annual compliance report for 2023 **notwithstanding** that the initial compliance period is for 2023 and 2024.

(8) Voluntary participation

The voluntary participation in the program by any person shall conclusively establish that person's consent to be subject to the jurisdiction of the State of Washington, its courts, and the administrative authority of Ecology to implement this program. If a person does not consent to such jurisdiction, then the person may not participate in the program.

## **SECTION 2 – DESIGNATION OF REGULATED PARTIES AND CREDIT GENERATORS**

### **WAC 173-424-200 Designation of Fuel Reporting Entities for Liquid Fuels**

(1) Applicability

The purpose of this section is to identify the first fuel reporting entities, subsequent fuel reporting entities, and the credit or deficit generator for liquid fuels. The first reporting entity is responsible for initiating reporting for a given amount of fuel within the online reporting system according to WAC 173-424-REP, and by default, holds the status as the initial credit or deficit generator. This section so prescribes the transfer of fuel reporting, and credit and deficit generating status.

(2) Designation of first fuel reporting entities for liquid fuels

Liquid fuels refer to fossil fuels (including gasoline, diesel, and conventional jet fuels), liquid alternative fuels (including ethanol, biomass-based fuels, and alternative jet fuels), and blend of liquid fossil and alternative fuels.

(a) Designation of first fuel reporting entities for liquid fuels

(i) The first fuel reporting entity for liquid fuels is the producer or importer of the liquid fuel.

(ii) For liquid fuels that are a blend of liquid alternative fuel components and a fossil fuel component, the first fuel reporting entity is the following

(A) The producer or importer of alternative fuels for the alternative fuel component.

(B) The producer or importer of liquid fossil fuels for the fossil fuel component, except conventional jet fuel. Conventional jet fuel is not subject to the CFP, and must not be reported.

(b) Designation of Fuel Reporting Entities for in Case of Transfer of Liquid Fuel

Ownership. An entity transferring ownership of fuel is the “transferor” and an entity acquiring ownership of fuel is the “recipient.”

(i) Transferring Status as Credit or Deficit Generator

(A) An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel, with the ownership of the fuel, if the following conditions are met by the ownership of fuel is transferred:

(I) The two entities agree by written contract that specifies the recipient accept all the responsibilities of a fuel reporting entity, and credit and deficit generator.

(II) In case of a deficit generating fuel, the two entities must have a written contract that specifies which party is responsible for accounting for the base deficit and incremental deficit in the annual credits and deficits balance calculation.

- (III) The transferor must provide the recipient a product transfer document that specifies the recipient is the credit or deficit generator.
  - (IV) The credit or deficit generator status cannot be passed to a downstream entity acquiring ownership of liquid fuel below the rack.
  - (B) If such a transfer occurs, the recipient also becomes the fuel reporting entity for the fuel while the transferor is still subject to reporting requirements.
- (ii) Retaining Status as Credit or Deficit Generator
- (A) An entity can retain its status as a credit or deficit generator for a given amount of liquid fuel, while transferring ownership of the fuel, if the following conditions are met by the ownership of fuel is transferred:
    - (I) The two entities agree by written contract that specifies the recipient accept all the responsibilities of a fuel reporting entity, and credit or deficit generator.
    - (II) In case of a deficit generating fuel, the two entities must have a written contract that specifies which party is responsible for accounting for the base deficit and incremental deficit in the annual credits and deficits balance calculation.
    - (III) The transferor must provide the recipient a product transfer document that specifies the recipient is the credit or deficit generator according to WAC 173-424-REP.
  - (B) An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel, with the ownership of the fuel, if the following conditions are met by the ownership of fuel is transferred:
    - (I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity and the transferor retains the responsibilities as a reporting entity, and credit or deficit generator.
    - (II) In case of a deficit generating fuel, the two entities must have a written contract that specifies which party is responsible for accounting for the

base deficit and incremental deficit in the annual credits and deficits balance calculation.

(III) The transferor must provide the recipient a product transfer document that specifies the recipient is the credit or deficit generator WAC 173-424-REP.

(iii) Transfer Period. For all liquid fuels,

(A) For all liquid fuels, the period in which credit or deficit generator status can be transferred to another entity, for a given amount of fuel, is limited to three calendar quarters.

(B) After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(iv) Designation of Fuel Exporter. Entities responsible for reporting exports of fuel that has been previously reported in the LRT-CBTS are identified below:

(A) When the fuel is sold or delivered above the rack for export, the entity holding the ownership title to the fuel as it crosses the Washington border on its way toward the first point of sale/delivery is responsible for reporting the export.

(B) When the fuel is sold across the rack for export, the entity holding title to the fuel as the fuel crosses the rack is responsible for reporting.

(C) When the fuel is diverted out-of-state below the rack, the entity holding title to the fuel, as it crosses the Washington border, is responsible for reporting the export.

#### **WAC 173-424-210 Fuel Reporting Entities for Gaseous Fuels**

(1) Applicability

This section applies to providers of both fossil and bio-based compressed natural gas, liquefied natural gas, liquefied compressed natural gas, and liquefied petroleum gas (or propane), and hydrogen used as transportation fuels in Washington.

(2) Designation of first fuel reporting entities for gaseous fuels. The first fuel reporting entity for different gaseous fuels is identified below:

- (a) Bio-CNG. For bio-CNG, including the bio-CNG portion of a blend with fossil CNG, the first fuel reporting entity is the producer or importer of the biomethane.
  - (b) Bio-LNG and Bio-L-CNG. For bio-LNG and bio-L-CNG, including the biomethane portion of any blend with fossil LNG and L-CNG, the first fuel reporting entity is the producer or importer of the biomethane.
  - (c) Renewable Propane. For renewable propane, including the renewable propane portion of a blend with fossil propane, the first fuel reporting entity is the producer or importer of the renewable propane.
  - (d) Fossil CNG, LNG, and L-CNG and Propane. For fossil CNG, LNG, L-CNG, and propane, including the fossil portion of any blend with a renewable fuel component, the first fuel reporting entity is the entity that owns the fueling equipment through which the fossil fuel is dispensed to motor vehicles for transportation use.
  - (e) Hydrogen
    - (i) Motor vehicles. The first fuel reporting entity for hydrogen is the entity that owns the fueling supply equipment through which hydrogen fuel is dispensed to motor vehicles for transportation use.
    - (ii) Forklift. The first fuel reporting entity for hydrogen used in fuel cell forklifts is the forklift fleet owner.
- (3) Designating another entity as fuel reporting entity. An entity may elect not to be the first fuel reporting entity for a given gaseous fuel, provided another entity has contractually agreed to be the fuel reporting entity for the fuel on its behalf. In such cases the two entities must agree by written contract that:
- (a) The original first fuel reporting entity per subsections (1)(A) through (1)(E) above will not generate credits or deficits in the LCFS, and will instead provide the amount of fuel dispensed, and meet registration, recordkeeping, and reporting requirements, to the contractually designated entity for the purpose of CFP reporting, and credit or deficit generation.

- (b) The contractually designated entity accepts all CFP responsibilities as the first fuel reporting entity, and as a credit or deficit generator, as applicable.

**WAC 173-424-220 Designation of Fuel Reporting Entity for Electricity**

(1) Applicability

This section prescribes how credits are generated for electricity when used as a transportation fuel.

(2) Responsibilities to generate credits

(a) To receive credits for electricity supplied as a transportation fuel, an entity subject to this section must:

- (i) Establish an account in the Online System;
- (ii) Comply with registration, recordkeeping, and reporting requirements.

(3) Non-residential electric vehicle charging

For electricity used to charge an electric vehicle at non-residential locations, such as in public for a fleet, at a workplace, or at multi-family housing sites, the eligible entities that generate credits are:

(a) The owner or service provider of the electric-charging equipment may generate credits from each piece of equipment.

(b) If the owner or service provider of the electric-charging equipment does not generate the credits, then an electric utility or its designated aggregator may generate the credit, if the two entities agree by written contract that:

- (i) The owner of the charging equipment will provide the electricity data to the designated aggregator.
- (ii) The designated entity accepts all CFP responsibilities as the fueling reporting entity and credit generator.

(4) Fixed Guideway Systems

For electricity used to power to fixed guideway vehicles such as light rail systems, streetcars, aerial tram, or transit buses,

(a) The transit agency operating the system is eligible to generate the credits for the electricity used to propel the system.

- (b) The electric utility is eligible to generate credits in its service area.
  - (i) The transit agency submits a written statement to Ecology that it will not opt in and generate credits under this provision; and
  - (ii) Ecology approves the statement.
- (5) Electric forklifts
  - (a) For electricity used as transportation fuel supplied to electric forklifts, the fleet owner is the fuel reporting entity and the credit generator creditor.
  - (b) The electric forklift owner may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:
    - (i) The electric forklift fleet owner will not generate credits and will instead provide the electricity data to the designated entity.
    - (ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.
  - (c) The electric utility can generate credits for electricity supplied to electric forklifts in its service area during a reporting period if not claimed by any of the entities in (a) and (b).
- (6) Electric Transport Refrigeration Units (eTRU), Electric Cargo Handling Equipment (eCHE), Electric Power for Ocean-Going Vessel (eOGV).
  - (a) For electricity supplied to eTRU, eCHE, or eOGV, the owner of the electric charging equipment is the fuel reporting entity and the credit generator.
  - (b) The owner of the electric charging equipment may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:
    - (i) The owner of the electric charging equipment will not generate credits and will instead provide the electricity data to the designated entity.
    - (ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.
- (7) Residential electric vehicle charging  
For electricity used to charge an electric vehicle in a (single- or multi-family) residence, the following entities are eligible to generate credits:

Below are the CARB and ODEQ designation of the credits from the electricity used to charge electric vehicles in a residence.

(a) California

- (i) Base credits: Electric utility or its designee is eligible credit generator in its service area.
- (ii) Incremental credit: Any entity, including an electric utility, is eligible to generate incremental credits for improvements in carbon intensity.
  - (A) For metered residential EV charging, incremental credits for each FSE may be generated for one of the following:
    - (I) Low-CI electricity
    - (II) Smart charging. The credit generator must demonstrate the residence is enrolled in a Time-of-Use rate plan, if offered by the LSE serving the residence.
  - (B) For metered residential EV charging, precedence in case of multiple claims for incremental credits
    - Electric utility
    - Original Equipment Manufacturer of EV (OEM-EV)
    - Any other entity has third priority
  - (C) For non-metered residential EV charging, the electric utility is eligible to generate incremental credits for supplying low-CI electricity to the EVs in its service territory.

(b) Oregon

- (i) Electric utility or its designee: Base and incremental credit
- (ii) Backstop and Incremental Aggregators: Base credit by backstop aggregator, and incremental credit by incremental aggregator

(c) What should be in Washington?

- (i) Base credit – electric utility or its designee
- (ii) Incremental credit
  - (A) Only metered or non-metered?

(B) Shared between electric utility and electric vehicle manufacturers?

- If to be shared, how to distribute it?
- Contribution in GHG and conventional air pollutants emission reduction through acceleration of electrification of transportation?
- Where in the supply chain need incentive to accelerate GHGs and conventional air pollutants reduction through electrification of transportation?

(iii) Backstop and incremental aggregators –unclaimed credits?

(8) Backstop aggregator. Text to be prepared

(9) Incremental Aggregator. Text to be prepared