



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON  
FILED

DATE: March 22, 2023

TIME: 8:18 AM

WSR 23-07-131

**Agency:** Department of Ecology AO # 22-17

**Title of rule and other identifying information:** (describe subject) Chapter 173-442 WAC, Clean Air Rule (CAR)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Department of Ecology proposes to repeal Chapter 173-442, Clean Air Rule. The rule is no longer necessary because its functions have been preempted and replaced by Chapter 173-446 WAC, Climate Commitment Act (RCW 70A.65.200(9)(c)).

**Reasons supporting proposal:** The Climate Commitment Act directs Ecology to repeal Chapter 173-442, Clean Air Rule.

The Clean Air Rule was a previous effort to address climate change. On August 13, 2015, Governor Inslee directed the Department of Ecology to “develop and adopt a rule to place a binding cap on carbon pollution emissions” in Washington State. As a result, Chapter 173-442 WAC, the Clean Air Rule (CAR) was adopted in September 2016.

After the rule was successfully challenged in court by a coalition of utility and industry groups, Ecology appealed the decision.

In January 2020, the Washington Supreme Court agreed in part with the lower court and ruled that Ecology had exceeded its authority to regulate fuel importers since the fuel had not yet been combusted. The Supreme Court sent the case back to the lower court to consider other issues in the case.

In spring 2021, the Washington legislature passed the Climate Commitment Act, which explicitly provides Ecology the authority to regulate transportation fuel providers. The Climate Commitment Act preempts the provisions of the CAR and directs Ecology to repeal the CAR (RCW 70A.65.200(9)(c)).

Given all these developments, the rule is no longer in effect and for these reasons, Ecology is preparing to repeal the CAR using an expedited rulemaking process.

**Statutory authority for adoption:** WA Clean Air Act, RCW 70A.15, Climate Commitment Act, RCW 70A.65

**Statute being implemented:** RCW 70A.65.200(9)(c)

**Is rule necessary because of a:**

Federal Law?

Yes  No

Federal Court Decision?

Yes  No

State Court Decision?

Yes  No

If yes, CITATION:

<b>Name of proponent:</b> (person or organization) Department of Ecology	<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental
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<b>Name of agency personnel responsible for:</b>			
	Name	Office Location	Phone
Drafting:	Gopika Patwa	Lacey	360-338-2419
Implementation:	n/a		
Enforcement:	n/a		

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** The rule is no longer necessary because its functions have been replaced by the 2021 Climate Commitment Act.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Bari Schreiner, Agency Rules Coordinator  
 Agency: Department of Ecology  
           Governmental Relations  
 Address: PO Box 47600, Olympia, WA 98503 -7600  
 Phone: 360-480-1106  
 Fax: N/A  
 Email: ecyrulemaking@ecy.wa.gov  
 Other: N/A

**AND RECEIVED BY** (date) May 22, 2023

**Date:** 3/21/2023

**Signature:**

**Name:** Heather Bartlett

A handwritten signature in black ink that reads "Heather Bartlett". The signature is written in a cursive style with a large, stylized initial 'H'.

**Title:** Deputy Director