



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)  
(Implements RCW 34.05.310)**

Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 18, 2023

TIME: 7:52 AM

WSR 24-01-089

**Agency:** Department of Ecology AO # 23-10

**Subject of possible rule making:** Ecology is considering amendments to Chapter 173-424 WAC, Clean Fuels Program Rule. The rule aims to reduce the life-cycle greenhouse gas emissions per unit energy, or carbon intensity (CI), of transportation fuels used in Washington.

This rulemaking will align the Clean Fuel Standard (CFS) with Engrossed Substitute Senate Bill 5447 (ESSB 5447), which was signed into law on May 3, 2023. The law promotes the production and use of low-carbon alternative jet fuels, which are more commonly referred to as sustainable aviation fuels (SAF), in Washington. Ecology's rulemaking will align with ESSB 5447 by updating the date at which SAF pathway applications can be submitted for CFS credit generation.

SAF reduces emissions from aviation, which has been identified as one of the most difficult transportation sectors to decarbonize. Lowering aviation emissions will also improve air quality and reduce health burdens on people living near airports and airport workers.

Additionally, this rulemaking may consider the following changes to strengthen/streamline the CFS program:

- Establishing requirements for a third-party verification program for fuel pathway applications and data reports submitted by program participants.
- Updating requirements to further encourage the production of low carbon intensity sustainable aviation fuels (SAF).
- Amending/refining the compliance and enforcement process for the CFS.
- Updating the rule language to improve clarity and readability, align the rule with guidance documents, correct errors, and make miscellaneous improvements to program implementation.
- Updating book-and-claim accounting requirements for electricity and biomethane.
- Harmonizing the rule with Oregon and/or California low carbon or clean fuel program requirements.

Ecology is not considering amending other main components of the program, including annual carbon intensity standards, the Tier 2 WA-GREET model, and land use change factors.

**Statutes authorizing the agency to adopt rules on this subject:** Chapter 70A.535 RCW, Transportation Fuel – Clean Fuels Program.

**Reasons why rules on this subject may be needed and what they might accomplish:** ESSB 5447 required Ecology to allow for one or more carbon intensity pathways for SAF by December 31, 2023. This rulemaking will seek to codify that date within Ecology's CFS rule and further incentivize the production of low-CI SAF in alignment with legislative priorities.

Amending the rule to encourage low-CI SAF production aligns with both ESSB 5447 and the 2022 Renewable Hydrogen law (SB 5910), which promotes the use and availability of green electrolytic hydrogen for SAF production in the state. Ecology will also consider aligning the rule with federal tax credits for low-CI hydrogen production established in the Inflation Reduction Act.

Ecology aims to establish third-party verification requirements to improve accuracy of data reported in the program, including information used to generate credits and deficits. These requirements will align with similar standards in Oregon and California's clean and low-carbon fuels programs, as Ecology is required by law to harmonize the rule with comparable regulations in other states.

Other clarifications will improve program credibility, make technical improvements identified through the implementation of the rule, and align the rule with agency guidance.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** RCW 70A.535.060 requires Ecology to seek to adopt rules that are harmonized with those of other regional low carbon fuel standards, such as Oregon and California. Amendments considered during this process will be aligned with those states' rules as much as practicable and except as otherwise provided in Chapter 70A.535 RCW. Ecology staff also regularly coordinate with staff from the California Air Resources Board (CARB) and the Oregon Department of Environmental Quality (DEQ) and will continue to do so throughout the rulemaking process.

In addition to state programs, there are also federal programs that regulate transportation fuels. EPA implements the federal Renewable Fuel Standard program that allows fuel producers of advanced biofuel, biomass-based diesel, cellulosic biofuel, and renewable fuel to generate credits, using Renewable Identification Numbers (RINs) for compliance. The federal Inflation Reduction Act (IRA) also promotes the production and use of low-CI hydrogen.

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


- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW)

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

Name: Adam Saul	(If necessary) Name: [ ]
Address: Department of Ecology Climate Pollution Reduction Program P.O. Box 47600 Olympia, WA 98504-7600	Address: [ ]
Phone: 360-742-7998	Phone: [ ]
Fax: N/A	Fax: [ ]
TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.	TTY: [ ]
Email: adam.saul@ecy.wa.gov	Email: [ ]
Web site: https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-424	Web site: [ ]
Other: N/A	Other: [ ]

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Ecology will conduct an Environmental Justice Assessment in accordance with RCW 70A.02.060 as a part of this rulemaking.

<b>Date:</b> December 18, 2023	<b>Signature:</b> 
<b>Name:</b> Joel Creswell	
<b>Title:</b> Climate Pollution Reduction Program Manager	