

WSR 24-11-042
EXPEDITED RULES
DEPARTMENT OF COMMERCE
[Filed May 9, 2024, 9:29 a.m.]

Title of Rule and Other Identifying Information: Updated rules for state agencies in WAC 194-28-070 to maintain consistency with corresponding rules for local governments in WAC 194-29-070 in determining how these entities can achieve the goals set forth in RCW 43.19.648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.19.648 requires that all state agencies and local governments, to the extent practicable as determined by rules adopted pursuant to RCW 43.325.080, satisfy 100 percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. Rules for state agencies were initially adopted in 2013 and are specified in WAC 194-28-070, while the corresponding rules for local governments were initially adopted in 2015 and are written in WAC 194-29-070. In reviewing these rules, the department of commerce (commerce) found an inconsistency in the rule language concerning routine charging in the field for covered vehicles. The purpose of this proposed expedited rule making is to update the rule language in WAC 194-28-070 for state agency vehicles so that it is more consistent with the rules for local governments in WAC 194-29-070. Commerce has developed draft rules to update guidance in WAC 194-28-070 (1)(a)(ii) to match the more recent language in WAC 194-29-070 (1)(a) defining what charging requirements for new electric or hybrid vehicles in state government fleets is considered to be practicable as these entities work to meet the goals in RCW 43.19.648.

Reasons Supporting Proposal: Since 2007, the legislature has recognized and mandated state agency and local government fleet conversion to electric or hybrid electric vehicles as a necessary step in achieving Washington's clean transportation goals. To this end, commerce is charged with writing and maintaining rules to determine what is practicable for these entities as they work to meet the requirements codified in RCW 43.19.648. Commerce completed rules to guide state agencies in 2013, and subsequently produced similar rules for local governments in 2015. Both types of entities are covered in the same mandate and beholden to the same targets identified in statute for practicable fleet conversion. However, the rapidly increasing availability and sophistication of charging infrastructure and electric vehicle technology in the United States means that what was considered practicable in 2015 (the year when the state agency rule became effective) was already outdated by 2018. Because of this, practicable field charging requirements in the 2015 rules for local governments (which became effective in 2018) are more relevant and up-to-date as compared to the corresponding rules for state agencies from 2013. It is important that commerce update rules for state agencies so that they are consistent with the most up-to-date guidance for practicable field charging. Doing so will preserve consistency between local government and state agencies, and will ensure that the most recent guidance is available for use by both types of entities.

Statutory Authority for Adoption: RCW 43.325.080.

Statute Being Implemented: RCW 43.19.648.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Seth Kolodziejewski, Olympia, Washington, 360-688-8189; Implementation and Enforcement: Hanna Waterstrat, Olympia, Washington, 360-764-0015.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Because these rules only affect state agencies' implementation of their statutory responsibilities from RCW 43.19.648, the rules relate only to internal governmental operations and are not subject to violation by an individual. An expedited rule making is appropriate given that the proposed changes only update outdated guidance such that it is identical to updated rules written three years later. Commerce is not adding anything new to the ways in which covered entities can meet the goals in RCW 43.19.648, but is simply ensuring consistency between the rules applying to state agencies and local governments.

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 Nick Manning, Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504, phone 564-200-4324, email nick.manning@commerce.wa.gov, AND RECEIVED BY July 22, 2024.

May 9, 2024
Amanda Hathaway
Rules Coordinator

OTS-5412.1

AMENDATORY SECTION (Amending WSR 13-10-016, filed 4/22/13, effective 5/23/13)

WAC 194-28-070 Compliance evaluation. RCW 43.325.080 requires the department to specify how agency efforts to meet the goals set forth in RCW 43.19.648(1) will be evaluated. In so doing, the department will consider the following criteria in determining whether state agencies have, to the extent practicable, satisfied (~~one hundred~~) 100 percent of fuel usage for operating vessels, vehicles, and construction equipment from electricity or biofuel, effective June 1, 2015:

(1) Vehicle electrification.

(a) It is considered practicable to procure a PHEV and PEV light-duty vehicle, light-duty truck, or medium-duty passenger vehicle when the following criteria are met:

(i) The vehicle is due for replacement ~~((7))~~;

(ii) ~~((The anticipated driving range or use would not require battery charging in the field on a routine basis))~~ Charging requirements can be met during routine use or through fleet management strategies; and

(iii) The lifecycle cost is within five percent of an equivalent HEV based on anticipated length of service.

(b) Agencies are encouraged to pursue electrification in additional vehicle classes as opportunities emerge.

(c) Per RCW 43.19.648(5), agencies are to install EVSE capable of charging PEVs and PHEVs in each of the state's fleet parking and maintenance facilities, to the extent practicable, by December 31, 2015. The department is not charged with monitoring or reporting on compliance with this law, but agencies need to show progress in this area for electricity to be a feasible fuel source at these locations.

(d) Under the federal Energy Independence and Security Act of 2007, the U.S. Department of Energy (USDOE) is responsible for rule-making to determine the extent to which alternative fuel credits recognize electricity used by HEVs and PHEVs in state vehicle fleets subject to the federal Energy Policy Act of 1992. The department will utilize the USDOE rule when crediting compliance for these vehicles.

(2) Biofuels.

(a) Biodiesel: Unless otherwise limited by law, it is considered practicable for agencies to:

(i) Use a minimum of ~~((twenty))~~ 20 percent biodiesel-blend fuel (B20) on an annualized basis when purchasing fuel through the state procurement system.

(ii) Make good faith efforts to identify sources and procure a minimum of B20 when purchasing fuel on a retail basis.

(b) Ethanol: It is considered practicable for agencies with "flex-fuel" vehicles capable of using either high-blend ethanol fuel (E85) or regular gasoline to make good faith efforts to identify sources and procure E85 when purchasing fuel on a retail basis if the price of E85 is at least ~~((twenty))~~ 20 percent less than regular gasoline.

(c) Renewable Natural Gas: It is considered practicable for agencies considering acquisition of natural gas-fueled vehicles to actively assess opportunities to procure renewable natural gas as the primary fuel.

(3) Alternate fuels.

Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department determines that electricity and biofuel are not reasonably available. If an agency believes electricity and biofuels are not reasonably available to fuel a specific vehicle, vessel, or construction equipment, the agency must submit a request for such a determination to the department by July 1 of the year prior to the agency's anticipated procurement on a form provided by the department. Such a request may be made as part of the agency's annual reporting under WAC 194-28-080.