

WSR 21-15-095
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY
[Order 21-04—Filed July 20, 2021, 8:06 a.m.]

Subject of Possible Rule Making: To implement the Transportation fuel—Clean fuels program (E3SHB 1091), chapter 317, Laws of 2021, ecology is beginning rule making to:

- Add a new chapter 173-424 WAC, Clean fuels program rule.
- Amend chapter 173-455 WAC, Air quality fee rule.

The new rule may:

- Establish carbon intensity standards for transportation fuels used in Washington.
- Assign compliance obligations to fuels with carbon intensities that exceed the standard.
- Establish compliance methods including assigning credits to fuels that have carbon intensities below the standard.

This rule making will also consider amendments to chapter 173-455 WAC to establish the process for setting fees to recover the cost of developing and implementing the program.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Transportation fuel—Clean fuels program (E3SHB 1091), chapter 317, Laws of 2021.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Transportation is the largest source of greenhouse gas (GHG) emissions in Washington, contributing about forty-five percent of statewide total GHG emissions. Washington enacted the Transportation fuel—Clean fuels program (E3SHB 1091), chapter 317, Laws of 2021, to reduce emissions of GHGs and conventional air pollutants from transportation and to spur economic development through deployment of clean fuel technology. As a result, Washington joins California, Oregon, and British Columbia, which already have similar clean (low carbon) fuel programs.

The law directs ecology to adopt rules to start the program by January 1, 2023, that reduce the carbon intensity of transportation fuels used in Washington by twenty percent below the 2017 levels by 2038. Carbon intensity accounts for GHG emissions throughout the full life cycle of the fuel (i.e., GHG emissions from feedstock production and transport, fuel production and transport, and use of the fuel) per unit energy of the fuel.

The law allows ecology to charge fees to recover the direct and indirect costs of developing and implementing the program, including the associated fuel supply forecasting work of the department of commerce (commerce).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The law requires commerce to develop a periodic fuel supply forecast, and directs ecology to enter into an interagency agreement with commerce to conduct biennial workload analyses of the program to serve as the basis for fee assessment. These workload analyses will occur outside of the rule-making process.

The law also directs ecology to consult with commerce and the governor's office in declaring and terminating deferrals from compliance with the carbon intensity standard in the rule.

The law requires ecology to harmonize the clean fuels program with similar programs in California and Oregon.

Process for Developing New Rule: 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 Debebe Dererie, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, mobile 360-688-8103, office 360-407-7558, for Washington relay service or TTY call 711 or 877-833-6341, email debebe.dererie@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-424-455>, <http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=WA-CLEAN-FUELS-UPDATE&A=1>.

Additional comments: Interested parties can stay informed about the rule making 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.

July 20, 2021
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