

WSR 22-18-103

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-12—Filed September 7, 2022, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-078.

Title of Rule and Other Identifying Information: Ecology is revising two rules:

Chapter 173-423 WAC, Clean vehicles program.

- This rule making will adopt California's Advanced Clean Cars II (ACC II) rule, which will ramp up sales of zero emission vehicles (ZEVs) in Washington state starting in model year 2026. It will also adopt California's heavy-duty engine and vehicle omnibus rules, establish a credit system for ZEV sales, and institute a one-time fleet reporting requirement.

Chapter 173-400 WAC, General regulations for air pollution sources.

- This rule making will update the adoption date of federal rules by amending the following sections:
  - o WAC 173-400-025 Adoption by reference.
  - o WAC 173-400-050 Emission standards for combustion and incineration units.
  - o WAC 173-400-070 Emission standards for certain source categories.
  - o WAC 173-400-115 Standards of performance for new sources.
  - o WAC 173-400-720 Prevention of significant deterioration (PSD). The rule will retain the current definition of "project emissions accounting."

Hearing Location(s): On October 12, 2022, at 1:00 p.m. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. We will be holding a presentation and question and answer session, followed by the hearing. Register in advance for this meeting <https://waecy-wa.gov.zoom.us/meeting/register/tZ0vduCgrzwiEtT05IjMLM1MLUn39OphEVjQ>.

Date of Intended Adoption: December 19, 2022.

Submit Written Comments to: Adam Saul, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email [adam.saul@ecy.wa.gov](mailto:adam.saul@ecy.wa.gov), by October 19, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email [ecyadacoordinator@ecy.wa.gov](mailto:ecyadacoordinator@ecy.wa.gov), visit <https://ecology.wa.gov/accessibility> for more information, by October 7, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 70A.30.010 directs ecology to adopt rules implementing California's vehicle emission standards and to maintain consistency with new iterations of California's standards and 42 U.S.C. Section 7507.

This rule making will adopt the following rules from California's Code of Regulations and update chapter 173-423 WAC to reflect the new adoption date of California's rules:

- Heavy-duty engine and vehicle omnibus regulation and associated amendments. These rules require cleaner, less-polluting heavy-du-

ty engines that emit much lower quantities of nitrogen oxide (NOx) and particulate matter (PM).

- Advanced Clean Cars II (ACC II). This rule will increase the zero emission vehicle (ZEV) sales of passenger cars, light-duty trucks and medium-duty vehicles in Washington state. The sales mandate would take effect in model year 2026 and begin by requiring 35 percent of new passenger vehicle sales to be ZEV, with that percentage increasing between six to eight percent per year until ZEVs make up 100 percent of new sales starting in model year 2035. It will also require light- and medium-duty vehicles to meet stronger emissions standards.

This rule making will also include the following:

- Early action ZEV credits: Adopt provisions to provide automakers with optional ZEV sales credits for model years 2023 and 2024. This would ensure Washingtonians have access to a wide variety of ZEV vehicle models before regulatory requirements take effect in model year 2025.
- One-time fleet reporting rule: Require fleet owners and operators to report information about medium- and heavy-duty vehicles (defined as vehicles above 8,500 pounds) in their fleet. This requirement mirrors a similar requirement in California's advanced clean trucks rule. Ecology currently has very little data on fleets, and the inventory of existing heavy-duty fleets and information about where these vehicles operate would enable ecology to develop and implement strategies to reduce their emissions.

**Chapter 173-400 WAC, General air quality regulations for air pollution sources:** The rule making will update the adoption date of federal rules. Ecology can only implement and enforce federal rules that the rule adopts by reference. This action will amend WAC 173-400-025 Adoption by reference, 173-400-050 Emission standards for combustion and incineration units, 173-400-070 Emission standards for certain source categories, 173-400-115 Standards of performance for new sources, and 173-400-720 Prevention of significant deterioration (PSD). The rule will retain the current definition of "project emissions accounting."

Reasons Supporting Proposal: Vehicle emissions are the biggest source of carbon pollution in Washington, accounting for about 45 percent of total greenhouse gas emissions in our state. Most of that pollution comes from passenger cars and trucks. We cannot make meaningful progress to address climate change without significantly reducing vehicle emissions.

This rule making will rapidly scale up ZEVs as a proportion of new vehicle sales, take polluting engines off the road, and mitigate the climate impacts of tailpipe emissions. Along with cutting greenhouse gases, reducing emissions from vehicles will improve air quality and protect public health, especially in communities nearby transportation corridors, ports, freeways, and other areas of concentrated emissions. Because more low-income people and people of color live in these communities, they are disproportionately harmed by vehicle emissions.

The new heavy-duty truck engine standards will reduce pollution and health risks by cutting emissions of NOx by 90 percent and PM by 50 percent. Exposure to these pollutants is linked to serious health problems, including asthma, lung, and heart disease. The rule changes

also add other requirements that reduce emissions and extend engine warranties and useful life.

Statutory Authority for Adoption: Chapter 70A.30 RCW, Motor vehicle emission standards; and chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70A.30 RCW, Motor vehicle emission standards; and chapter 70A.15 RCW, Washington Clean Air Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: More information is available in the preliminary regulatory analysis and the determination of nonsignificance and environmental checklist prepared to comply with the State Environmental Policy Act (SEPA). Refer to the rule making web page for a link to these documents <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-423-400Jan18>.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Saul, Lacey, 360-742-7998; Implementation and Enforcement: Dustin Watson, Lacey, 360-764-6785.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Adam Saul, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-7998, Washington relay service or TTY call 711 or 877-833-6341, email [adam.saul@ecy.wa.gov](mailto:adam.saul@ecy.wa.gov).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW [no information supplied by agency].

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (chapter 19.85 RCW) (RFA). Where the proposed rule is identical to baseline (dictated by existing rule, statute, or federal law), it is exempt from analysis.

See the small business economic impact statement (SBEIS) below for a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. Additional exemptions under RFA are identified if applicable.

The proposed rule does impose more-than-minor costs on businesses.

#### SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is exempted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (Ecology publication no. 22-02-030, September 2022).

#### **COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: Baseline:**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- RCW 70A.30.010: Adopts California's vehicle emission standards and directs ecology to adopt rules implementing them, and to amend the rules to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Section 7507.
- Section 177 of the Clean Air Act (42 U.S.C. §7507): Authorizes other states to choose to adopt California's standards instead of federal requirements.
- Chapter 70A.15 RCW, Washington Clean Air Act.
- The existing rules:
  - Chapter 173-423 WAC, Clean vehicles program.
  - Chapter 173-400 WAC, General air quality regulations for air pollution sources: Establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting federal air quality standards.

**Adopt California's heavy-duty engine and vehicle omnibus regulation and associated amendments: Baseline:** RCW 70A.30.010 directs ecology to adopt rules implementing California's vehicle emission stand-

ards and to amend the rule to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Section 7507.

**Proposed:** The proposed amendments would adopt by reference sections of the California Code of Regulations, which require drastically cutting smog-forming NOx from conventional heavy-duty engines. The omnibus regulation would significantly increase the stringency of NOx emissions standards and would lengthen the useful life and emissions warranty of heavy-duty diesel engines for use in vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. The more stringent NOx emission standards begin with the 2024 model year engines and become more stringent with 2027 and subsequent model year engines.

**Expected Impact:** Ecology is required by statute to adopt California's vehicle emission standards and to amend the rule from time to time to maintain consistency with the California motor vehicle emission standards; therefore, we do not expect any costs or benefits associated with this change as compared to the baseline.

California's rule includes a provisional exemption for transit buses. Washington state does not have specific regulations for transit buses like California and will not adopt such regulations in this year's rule making. This gives ecology time to review California's innovative clean transit rule.

**Relevant Exemptions:** RCW 19.85.025(3), 34.05.310 (4)(e), 34.05.310 (4)(c).

**Adopt California's Advanced Clean Cars II Rule: Baseline:** In 2020, the legislature adopted the California rules as written, and directed ecology to adopt rules implementing them (RCW 70A.30.010). In November 2021, ecology amended chapter 173-423 WAC, Clean vehicles program, to incorporate the California Advanced Clean Cars I (ACC I) program. This program combines the control of criteria pollutants, other pollutants, and greenhouse gas emissions into a coordinated regulatory package. The rule adopts California's motor vehicle emission standards that apply to:

- Low emission vehicles - passenger cars, light-duty trucks, and medium-duty vehicles (trucks, SUVs, and vans).
- Zero emission vehicles - passenger cars, light-duty trucks, and medium-duty vehicles (trucks, SUVs, and vans).
- Zero emission trucks - vehicles greater than 8,500 pounds GVWR (delivery vans, work trucks, long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles). This is California's Advanced Clean Trucks rule.

**Proposed:** Ecology is proposing to adopt the ACC II program after California's adoption of the program on August 25, 2022. The newly proposed CARB amendments would set ZEV and LEV requirements for model year 2026 and subsequent model year vehicles, including new supporting ZEV and LEV test procedures. It would also establish ZEV assurance measures, which include new requirements for:

- Durability.
- Warranty.
- Serviceability.
- Data standardization.
- Battery labeling.

These rules are intended to ensure ZEVs are able to serve as true replacements to conventional internal combustion engine vehicles (ICEVs), thereby ensuring emissions reductions occur and providing

consumer confidence needed to support the full entry of ZEVs into new and used vehicle markets.

**Expected Impact:** Ecology is required by statute to adopt California's vehicle emission standards and to amend the rule from time to time to maintain consistency with the California motor vehicle emission standards; therefore, we do not expect any costs or benefits associated with this change as compared to the baseline.

**Relevant Exemptions:** RCW 19.85.025(3), 34.05.310 (4) (e), 34.05.310 (4) (c).

**Allow automakers to earn credits for model years 2023 and 2024:**

**Baseline:** In November 2021, ecology adopted the California ZEV requirement into chapter 173-423 WAC to require automakers delivering new, light-duty vehicles for sale in Washington state to make a certain percentage of those vehicles ZEVs. ZEVs can include:

- Battery electric vehicles (BEV),
- Plug-in hybrid electric vehicles (PHEV), or
- Hydrogen fuel cell electric vehicles (FCEV).

When ecology adopted the rule, we opted to defer consideration of issuing proportional or early action credits (for selling ZEVs in the state before the rules take effect), due to existing robust sales of ZEVs in the state.

**Proposed:** The proposed rule amendments would provide an option for automakers to earn early action credits for ZEV sales for model years 2023 and 2024.

An early action credit is an optional credit for a ZEV sale before the ZEV compliance period starts in model year 2025. For model year 2025, earned credits would be regulatory credits under ACC I. Both early action and regulatory credits will be allocated based on the performance of the ZEV being sold. For example, long-range BEVs are eligible for the maximum of four credits, whereas some PHEVs with limited range can receive as little as a fraction of one credit.

Starting in model year 2026, ZEVs will receive a maximum of one credit per sale. All credits banked under the previous rules will be converted to historical credits. Ecology considered multiple options on how to assign credits and, seeking public input, presented the revised early credit options report to the stakeholders.

Ecology considered the following options:

- Option 1. Full proportional credits: Washington credits are proportional to banked California credits.
- Option 2. Adjusted proportional credits: Washington credits are proportional to banked California credits but adjusted for robust Washington sales.
- Option 3. No credits.
- Option 4. Credits for model year 2023 and model year 2024.
- Option 5. Combination: A mix of proportional credits and early action credits.

After reviewing and considering input received during the informal comment period, ecology concluded that the stakeholders recognize Option 4 - Credits for model year 2023 and 2024 - as the most beneficial. This option would provide early action - a credit for a ZEV sale before the ZEV compliance period starts with model year 2025.

**Expected Impact:** The amended rule would provide benefits to EV automakers with sales in Washington, and to all Washingtonians. Offering early action credits provides a new incentive to automakers to make EV models available in Washington state for the two years before

the start of our clean vehicles program. Without the ability to generate credits during this period, some automakers may choose to send EVs to states that offer credits to meet compliance obligations. Some automakers do not currently offer certain ZEV models for purchase in Washington due to the lack of ZEV credits, and will likely continue to keep those models off the Washington market until credits are available. Without early action credits, Washingtonians may continue to be unable to purchase some popular ZEV models in Washington.

**Relevant Exemptions:** None. Analysis required, but as discussed above no associated compliance costs.

**Update the adoption date of California's rules: Baseline:** The current rule incorporates California Code of Regulations as they existed on June 22, 2021, or the adoption by reference date: September 7, 2022, whichever is later.

**Proposed:** The amended rule would incorporate California Code of Regulations, as they exist on September 7, 2022, or the adoption by reference date, whichever is later.

**Expected Impact:** This change would allow ecology to meet requirements in RCW 70A.30.010 and would not generate any costs or benefits as compared to the baseline.

**Relevant Exemptions:** RCW 19.85.025(3), 34.05.310 (4)(c).

**Require fleet owners and operators to report: Baseline:** Currently, no entities are required to report to ecology information about vehicles over 8,500 pounds.

**Proposed:** The following entities would be required to report fleet information to ecology:

- Any person that owns or operates a business with gross annual revenues greater than \$50 million in the United States for the 2022 tax year, including revenues from all subsidiaries, subdivisions, or branches, and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds as GVWR operated in Washington in 2022.
- Any person that owns or operates a facility in Washington and, in the 2022 calendar year, owned or operated five or more vehicles with a GVWR greater than 8,500 pounds.
- Any person that operated a facility in Washington and in the 2022 calendar year, dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.
- Any Washington government agency, including state and local government, that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.
- Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

**Expected Impact:** We expect fleet reporting to impose costs on fleet owners and operators associated with the time necessary to report information about vehicles over 8,500 pounds. We also expect benefits from the proposed requirement, as the inventory of the existing heavy-duty fleet and information on where these vehicles operate would provide information to help ecology to develop a statewide strategy to reduce their emissions and assist with outreach for environmental justice advocates. Ecology currently has very little data on medium- and heavy-duty vehicle fleets. This data collection effort will help ecology identify preliminary opportunities for efficiently reducing emissions and at the same time not to overimpose requirements that would create excess or unreasonable costs, and cause unexpected side ef-

fects. This would also accelerate ZEV adoption and site ZEV infrastructure such as heavy-duty chargers.

**Relevant Exemptions:** None.

**Organization and clarification without material impact: Baseline:** Over the course of implementation, ecology determined that some parts of the rules were unclear or poorly organized.

**Proposed:** The proposed rule amendments clarify and organize language and requirements to improve clarity and facilitate compliance. Other changes are necessary to make rules consistent across amended sections.

**Expected Impact:** No behavioral impact is expected, although the clarification of, and ease of compliance with, the proposed rule may reduce transitory costs (increased benefits) such as time spent determining whether or how to comply.

**Relevant Exemptions:** RCW 19.85.025(3), 34.05.310 (4) (d).

**COSTS OF COMPLIANCE: EQUIPMENT:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

**COSTS OF COMPLIANCE: SUPPLIES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

**COSTS OF COMPLIANCE: LABOR:** We identified 2,226 entities that would be required to report under the proposed rule.

**Summary of the number of entities we assume the proposed requirement would impact:**

Reporting category	Number of entities
Businesses with gross annual revenues greater than \$50 million and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds GVWR operated in Washington in 2022.	35
Washington businesses in 2021 that owned and operated five or more vehicles with a GVWR greater than 8,500 pounds.	1,347
Out-of-state businesses in 2021 that operated five or more vehicles with a GVWR greater than 8,500 pounds in Washington.	108
Businesses in the 2022 calendar year that dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.	395
Government agencies, excluding state agencies, which operate five or more vehicles over 8,500 pounds GVWR in Washington in 2022.	320
Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.	19
State fleet data reporting agencies.	2
<b>Total</b>	<b>2,226</b>

**Cost of reporting for one entity:** In 2019, CARB published the Standardized Regulatory Impact Assessment (SRIA) for the advanced clean trucks (ACT) regulation. Under the ACT regulation, large fleet owners and large companies that contract out for transportation-related services are required to report the following information to CARB:

- A list of the vehicles they own.
- Location information for their companies in California.
- How they and their contractors move freight and perform other services.

Companies that do not own trucks need to report summary information about the:

- Types of product they move.
- Types of services they hire.



Most large companies that own trucks or buses have fleet software or other data management systems to pull information about their fleet and business quickly.

The proposed rule would require all covered parties to report fleet information.

The proposed rule also requires businesses to keep their reporting records for five years after the reporting deadline.

Affected entities would need time to prepare and submit their report. CARB estimated it takes on average:

- Two hours to retrieve, review, and report company-specific information.
- Two hours to retrieve, review, and report vehicle information.

This means businesses will need four hours to prepare and submit their report to ecology. This may be higher or lower from company to company. These averages assume that some large entities will not have information to report other than to respond that they do not contract directly for any transportation services. We assumed the hourly cost is \$50 per hour for staffing and lost revenue from the employee assigned to do the reporting.

The cost of reporting in the California rule is about \$200. Because California's reporting requirements and the mean hourly wage for transportation industry are similar to Washington, we conclude the cost of reporting, under the proposed rule, is also close to \$200. To be conservative, we also include a high-end estimate of eight hours (\$400) that an entity may need to report. This is a one-time requirement that will provide information to help ecology and other organizations develop a strategy for reducing emissions from medium- and heavy-duty vehicles.

We estimated the total cost range for all entities affected by the proposed change is between \$445,200 and \$890,400.

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS:** Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

**COSTS OF COMPLIANCE: OTHER:** Not applicable.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:** We calculated the estimated per-business costs to comply with the proposed rule, based on the costs estimated in the preliminary regulatory analyses for this rule making. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule employs approximately six people. The largest 10 percent of affected businesses employ an average of 5,925 people. Based on cost estimates, we estimated the following compliance costs per employee:

Type of cost (or total cost)	Low	High
Average small business employment	6	6
Average employment at largest 10 percent of businesses	5,925	5,925
Small business cost per employee	\$33	\$66
Largest business cost per employee	\$0.03	\$0.07

We conclude that the proposed rule may have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Note that for California's rule the \$200 estimate is based on large fleets (50 vehicles or more), as the rule only affects those entities. As the proposed reporting requirements would affect entities with fleets of five and more vehicles, we expect the base cost for small businesses to be lower, because they generally have smaller fleets to report.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur costs could experience reduced sales or revenues if the proposed rule significantly affects the prices of the goods they sell. The degree to which this could happen is strongly related to:

- Each businesses' production and pricing model (whether additional lump-sum costs would significantly affect marginal costs).
- Specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices.
- The relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for:

- Interindustry impacts.
- Price, wage, and population changes.
- Dynamic adjustment of all economic variables over time.

Using the REMI E3+ model, we applied potential costs (averaging them to \$670,000 and dividing them equally between years 2022 and 2023) to the following industries:

- Truck transportation.
- Couriers and messengers.
- Transit and ground passenger transportation.
- Scenic and sightseeing transportation and support activities for transportation.
- Warehousing and storage.

Modeling results did not indicate significant impacts to industries. However, output would decrease by \$251,213 in year 2022 and \$318,310 in 2023 over all industries in the state. Although the results for affected industries did show some effect on output, and therefore revenue of the industries, the relative indicators of industries demonstrate very little impact.

**Effects of the reporting requirement costs on output, USD, 2022-2023:**

Industry	2022 Output	Percent	2023 Output	Percent
Truck transportation	-45,170	-0.001	-54,989	-0.001
Couriers and messengers	-14,936	-0.001	-17,958	-0.001
Transit and ground passenger transportation	-5,997	0	-8,056	-0.001
Scenic and sightseeing transportation and support activities for transportation	-34,379	-0.001	-42,360	-0.001
Warehousing and storage	-11,714	-0.001	-13,983	-0.001
Transportation and warehousing total	-113,712	0	-139,258	-0.001

Industry	2022 Output	Percent	2023 Output	Percent
State economy total	-251,213	0	-318,310	0

**MITIGATION OF DISPROPORTIONATE IMPACT:** RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see preliminary regulatory analyses), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

The scope of this rule making was limited to adopting California's ACC II program and establishing fleet reporting requirements, so we could not legally include options (a) and (c) - (f).

Finally, we included the following elements in the proposed rule amendments to reduce costs to small businesses.

We simplified, reduced, and eliminated reporting requirements, such as we rejected proposing the following requirements:

- The fleet reporting requirement should be annual instead of one-time.

See preliminary regulatory analyses for the details.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** We involved small businesses and local governments in their development of the proposed rule amendments:

- Ecology held three webinars for stakeholders concerning the proposed rule amendments on February 28, April 19, and June 14, 2022.
- The following stakeholders attended the webinars: Snohomish PUD, City of Seattle, Puget Sound Clean Air Agency, Cowlitz PUD, and NW Seaport Alliance.
- Stakeholder meeting notices, materials, and project updates sent to groups above and posted to rule-making website.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/naics/?58967?yearbck=2022>.

Long-haul freight transport companies, 484121  
 Local freight transport companies, 484110  
 Shipping and delivery companies, 492110  
 Drayage truck dispatchers, 488510  
 Logging companies, 113000  
 Hazardous materials transport companies, 562112  
 Fuel distributors, 424720  
 Specialized freight haulers, 484220  
 Construction and mining companies with HD fleets, 53241  
 Transport logistics operators, 488510  
 HVAC and plumbing contractors, 238220  
 Distribution fleets for retail companies, 425120  
 Distribution fleets for retail products, 424490  
 Restaurant food distribution fleets, 423850  
 Motor vehicle transport companies, 488490  
 Truck rental companies, 532120  
 Motor coach operators, 485113  
 Electrical utility repair fleets, 237130  
 Other utility repair fleets, 561990  
 Federal agencies with HD fleets in WA, 999000  
 US Postal Service, 491  
 State agencies with HD fleets, 999200  
 School districts and pupil transporters, 485410  
 Local agencies with HD fleets, 999300

**IMPACT ON JOBS:** We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state.

Industry	Initial jobs impact	Jobs impact in 20 years
Whole state	-1.8	-0.015
Truck transportation	-0.274	0.001
Couriers and messengers	-0.324	0
Transit and ground passenger transportation	-0.187	0
Scenic and sightseeing transportation and support activities for transportation	-0.171	0
Warehousing and storage	-0.129	0
Transportation and warehousing total	-1.089	0

A copy of the statement may be obtained by contacting Adam Saul, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-7998, Washington relay service or TTY call 711 or 877-833-6341, email adam.saul@ecy.wa.gov.

September 7, 2022  
 Heather R. Bartlett  
 Deputy Director

OTS-4006.1

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-400-025 Adoption by reference.** (1) Adoption by reference date: (~~December 23, 2020~~) August 24, 2022.

(2) Federal rules mentioned in this rule are adopted as they exist on the date in subsection (1) of this section. Adoption by reference means the federal rule applies as if it was copied into this rule.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-400-025, filed 11/29/21, effective 12/30/21. Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-025, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-025, filed 5/31/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-050 Emission standards for combustion and incineration units.** (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting waste wood for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) or approved procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*,

state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. A commercial and industrial solid waste incineration unit that commenced construction on or before November 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025).

Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this ~~((section))~~ subsection is ~~((based-on))~~ a federal requirement~~((s))~~.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC

173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.



(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units*. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;

- Waste management plan requirements in 60.2620 through 60.2630;

- Operator training and qualification requirements in 60.2635 through 60.2665;

- Emission limitations and operating limits in 60.2670 through 60.2685;

- Performance testing requirements in 60.2690 through 60.2725;

- Initial compliance requirements in 60.2700 through 60.2725;

- Continuous compliance requirements in 60.2710 through 60.2725;

- Monitoring requirements in 60.2730 through 60.2735;

- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;

- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. A small municipal waste combustion unit constructed on or before August 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart JJJ (in effect on the date in WAC 173-400-025).

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units*. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants*. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns*. Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators*. If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005, for all Class II units, and by November 6, 2005, for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-050, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-050, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-050, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-050, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-070 Emission standards for certain source categories.** Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner

may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of waste wood must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4), 173-400-115, or 40 C.F.R. Part 62, Subpart III in effect on the date in WAC 173-400-025 as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) **Grain elevators.** Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Other waste wood burners.**

(a) Waste wood burners not specifically provided for in this section shall meet all applicable provisions of:

(i) WAC 173-400-040 and 173-400-050;

(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and

(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).

(b) Such waste wood burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill that commenced construction prior to May 30, 1991, and has not been modified or reconstructed since May 30, 1991, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025). A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submission of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d) (i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.



- (ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:
- (A) The systems must follow the operational standards in 40 C.F.R. 60.753.
- (B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).
- (C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.
- (f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:
- (i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;
- (ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and
- (iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.
- (g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.
- (h) Gas collection and control systems.
- (i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).
- (ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.
- (iii) The system must be installed within eighteen months after the submittal of the design plans.
- (iv) The system must be operational within thirty months after the adoption date of this section.
- (v) The emissions that are collected must be controlled in one of three ways:
- (A) An open flare designed and operated according to 40 C.F.R. 60.18;
- (B) A control system designed and operated to reduce NMOC by 98 percent by weight; or
- (C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.
- (i) Air operating permit.
- (i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b) (2) (v).

**(7) Municipal solid waste landfills that commenced construction on or before July 17, 2014, and have not been modified or reconstructed since July 17, 2014.** A municipal solid waste landfill that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with the requirements in 40 C.F.R. Part 62, Subpart 000 (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-070, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-070, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-070, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-070, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; WSR 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-115 Standards of performance for new sources. NSPS.**

Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) **Adoption of federal rules.**

(a) 40 C.F.R. Part 60 and Appendices (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) of this subsection.

(b) Exceptions to adopting 40 C.F.R. Part 60.

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted:

(A) 40 C.F.R. 60.5 (determination of construction or modification);

(B) 40 C.F.R. 60.6 (review of plans);

(C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, Cf, BBBB, DDDD, FFFF, MMMM, (~~UUUU~~) and UUUUa (emission guidelines); and

(D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

Note: Refer to WAC 173-400-050 and 173-400-070 for adoption of federal rules that implement emission guidelines.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-115, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-115, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. WSR 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 11/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; WSR 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and

70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; WSR 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-720 Prevention of significant deterioration (PSD).**

(1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k) (1) and 52.21 (p) (1) through (4) (in effect on the date in WAC 173-400-025); and

(vi) The following subparts of 40 C.F.R. 52.21 (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) (i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.

Section	Title
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b) (17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (l) (2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b) (43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b) (48) (ii) (c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b) (50) (i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b) (37) related to the definition of re-powering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b) (51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21 (i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p) (1), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

~~(A) ((In 40 C.F.R. 52.21 (b) (1) (i) (a) and (b) (1) (iii) (h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.~~

~~(B) 40 C.F.R. 52.21 (b) (23) (i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.~~

~~(C) 40 C.F.R. 52.21 (c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.~~

~~(D)) In (a) (2) (iv) (c): "Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the projected actual emissions (as defined in paragraph (b) (41) of this section) and the baseline actual emissions (as defined in paragraphs (b) (48) (i) and (ii) of this section), for each existing emissions unit, equals or exceeds the~~

significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(B) In (a) (2) (iv) (d): "Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the potential to emit (as defined in paragraph (b) (4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b) (48) (iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(C) In (a) (2) (iv) (f): "Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase for each emissions unit, using the method specified in paragraphs (a) (2) (iv) (c) and (d) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(D) In 40 C.F.R. 52.21 (b) (1) (i) (a) and (b) (1) (iii) (h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(E) 40 C.F.R. 52.21 (b) (23) (i) after the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(F) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption."

(G) 40 C.F.R. 52.21 (r) (6)

"The provisions of this paragraph (r) (6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b) (41) (ii) (a) through (c) for calculating projected actual emissions.

- (i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
  - (a) A description of the project;
  - (b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
  - (c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b) (41) (ii) (c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

- (ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.
- (iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.
- (iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:
  - (a) The name, address and telephone number of the major stationary source;
  - (b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
  - (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:
  - (a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

- (b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r)(6)(vi)(b) of this subsection, and not also within the meaning of (r)(6)(vi)(a) of this subsection, then the provisions of (r)(6)(vi)(ii) through (v) of this subsection do not apply to the project."

~~((E))~~ (H) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

~~((F))~~ (I) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

~~((G))~~ (J) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

~~((H))~~ (K) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

~~((I))~~ (L) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

~~((J))~~ (M) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) The following provisions in 40 C.F.R. 52.21 ~~((r)(2) is)~~ are not adopted: (a)(2)(iv)(g) and (r)(2).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-720, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-720, filed 11/28/12, effective 12/29/12; WSR 11-17-037 (Order 11-04), § 173-400-720, filed 8/10/11, effective



9/10/11; WSR 11-06-060 (Order 09-01), § 173-400-720, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

## OTS-4007.2

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-030 Adoption by reference.** (1) This chapter adopts by reference California Code of Regulations ~~((7))~~ in the following titles:

(a) Title 13, sections 1900, 1956.8 ~~((g) and (h))~~, 1960.1, 1961, 1961.1 to ~~((1961.3))~~ 1961.4, 1962.2 to 1962.8, ~~((1962.3,))~~ 1963, 1963.1 to 1963.5, 1965, 1968.2, 1968.5, 1969, 1971.1, 1971.5, 1976, 1978, 2035 to 2040, 2046, 2109, 2111 to ((2120, 2122 to)) 2133, 2135, ((2141)) 2137, 2139 to 2149, 2166, 2166.1, 2167, 2168, 2169, 2169.1 to 2169.8, 2170, 2235, 2423, 2485 and Appendix A to Article 2.1 in section 2112;

(b) Exception to adopting Title 13 by reference. The following sections are not adopted by reference:

(i) Section 1956.8 (a) (2) (F); and

(ii) Section 1962.4 (e) (2) (A) 3.a.i and ii; and

(c) Title 17, sections 95300 to 95307, 95311, and 95660 to 95663.

(2) Adoption or adoption by reference means the rule applies as if it was copied into this rule. California Code of Regulations mentioned in this rule are adopted as they exist on ~~((June 22, 2021))~~ September 7, 2022, or the adoption date in WAC 173-400-025(1), whichever is later.

(3) Copies of the relevant sections of California Code of Regulations adopted by reference in this chapter are available on ecology's website or by contacting:

Washington State Department of Ecology  
Air Quality Program  
300 Desmond Drive  
Lacey, WA 98503  
360-407-6800

(4) For purposes of applying the adopted sections of California Code of Regulations in Washington, unless the context requires otherwise:

(a) "California" means "Washington";

(b) "CARB," "ARB," or "air resources board" means "ecology"; and

(c) "Executive officer" means "ecology."

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-030, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-030, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-040 Definitions and abbreviations.** The following definitions apply to the administration of this chapter. Any term that is not defined in this section must be as defined or described in California Code of Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662, as applicable. Definitions in California Code of Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662 will prevail if any discrepancy arises.

(1) "Authorized emergency vehicle" is defined as provided in RCW 46.04.040.

(2) "Ecology" means the department of ecology.

~~((2))~~ (3) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

~~((3))~~ (4) "Light-duty truck" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((4))~~ (5) "Medium-duty passenger vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((5))~~ (6) "Medium-duty vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((6))~~ (7) "Model year": Means the manufacturer's annual production period that includes January 1st of a calendar year, or if the manufacturer has no annual production period, the calendar year. The model year for a motor vehicle manufactured in two or more stages is the model year in which the chassis is completed, except for a vehicle subject to California Code of Regulations, Title 13, sections 1963 through 1963.5 (Advanced Clean Trucks): Is defined as provided in California Code of Regulations, Title 13, section 1963(c).

~~((7))~~ (8) "Manufacturer" means an independent low volume manufacturer, intermediate volume manufacturer, large volume manufacturer, or a small volume manufacturer defined as provided in California Code of Regulations, Title 13, section 1900.

~~((8))~~ (9) "Passenger car" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((9))~~ (10) "Transit agency" is defined as provided in California Code of Regulations, Title 13, section 2023.

(11) "Zero-emission vehicle" or "ZEV" is defined as provided in California Code of Regulations, Title 13, section 1962.2(a).

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-040, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-040, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-040, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-060 Exemptions.** The following vehicles are not subject to this chapter:

- (1) Military tactical vehicles;
- (2) Vehicles sold for registration and use out-of-state;

(3) Previously registered vehicles where the mileage at the time of sale exceeds 7,500 miles, provided that for vehicle dealers, the mileage at the time of sales is determined by the odometer statement at the time the vehicle dealer acquired the vehicle;

(4) Vehicles that are only available for rent to a final destination outside of Washington;

(5) Vehicles purchased by a nonresident prior to establishing residency in Washington, regardless of the mileage on the vehicle;

(6) Vehicles transferred by inheritance or as a result of divorce, dissolution or legal separation;

(7) Motor vehicles purchased for use by a local police department, county sheriff, fire district, or the Washington state patrol; and

(8) Motor vehicles acquired by a resident who is a member of the military stationed outside Washington pursuant to military orders.

(9) The following vehicles are exempt from WAC 173-423-081:

(a) Beginning on January 1, 2025, new diesel-fueled buses sold to a transit agency, provided that they comply with applicable motor vehicle emission standards for transit agency vehicles set out in this chapter;

(b) Authorized emergency vehicles, as defined in RCW 46.04.040.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-060, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-060, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-060, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-070 Low emission vehicles.** (1) **Requirement to meet California vehicle emission standards.** All vehicles subject to this chapter must be certified to the standards adopted by reference in WAC 173-423-030 to be registered, leased, rented, licensed, or sold for use in Washington:

(a) Starting with model year 2009: Passenger car, light-duty truck, or medium-duty passenger vehicle; and

(b) Starting with model year 2025: Medium-duty vehicle.

(2) **Fleet average emissions - Nonmethane organic gas (NMOG) plus oxides of nitrogen exhaust.**

(a) Effective model year 2009 through 2014, except as provided in this subsection, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars and light-duty trucks delivered for sale in Washington must not exceed the fleet average NMOG exhaust emission requirement in California Code of Regulations, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in (b) of this subsection in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet

average NMOG + NOx values using the applicable full useful life standards.

(b) Starting with model year 2015, a motor vehicle manufacturer must comply with the fleet average nonmethane organic gas plus oxides of nitrogen emission values as provided in California Code of Regulations, Title 13, sections 1961.2(b) and 1961.4(c).

(c) Emission credits and debits may be accrued and used as provided in California Code of Regulations, Title 13, sections 1961.2(c) and 1961.4(e).

(d) Each manufacturer must submit a report to ecology by March 1st of the calendar year containing the fleet average emissions for the model year that ended most recently. The report must follow California Code of Regulations, Title 13, sections 1961.2 and 1961.4, and must be in the same format used to report the information to the California air resources board.

(e) If a report submitted by the manufacturer under ~~((e))~~ (d) of this subsection demonstrates that the manufacturer does not comply with the fleet average emission standard, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.2 (c) (3) and 1961.4 (e) (3);

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state;

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

**(3) Fleet average emissions - Greenhouse gas exhaust.**

(a) Starting with model year 2009, a motor vehicle manufacturer must comply with the emission standards, fleet average greenhouse gas exhaust emission requirements, and other requirements provided in California Code of Regulations, Title 13, sections 1961.1 and 1961.3.

(b) Emissions credits and debits may be accrued and used in accordance with California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b).

(c) Each manufacturer must submit a report to ecology by March 1st that includes end-of-model year data calculating the fleet average greenhouse gas emissions for the model year that has just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to California Code of Regulations, Title 13, sections 1961.1 and 1961.3. The report must follow the procedures in California Code of Regulations, Title 13, sections 1961.1 and 1961.3 and must be in the same format used to report this information to the California air resources board.

(d) If the report submitted by the manufacturer under this subsection demonstrates that the manufacturer does not comply with the fleet average emission standards, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b), as appropriate.

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage

of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state.

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

**(4) Manufacturer delivery reporting requirements.**

(a) The manufacturer must submit to ecology one copy of the California executive order and certificate of conformity for certification of new motor vehicles for each engine family to be sold in Washington within 30 days of ecology's request. If these reports are available electronically, the manufacturer must send the record in an electronic format acceptable to ecology.

(b) Commencing with the 2009 model year and prior to the beginning of each model year, upon request, each manufacturer must submit to ecology a list of all models of medium-duty vehicles and medium-duty passenger vehicles that will be delivered to Washington dealers.

(c) Upon request, each manufacturer must report to ecology the vehicle identification numbers (VIN) of each passenger car, light-duty truck, medium-duty passenger vehicle, and medium-duty vehicle delivered to each Washington dealer that is not certified to California emission standards.

(d) For the purposes of determining compliance with this chapter, ecology may require a vehicle manufacturer to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter, including all certification materials submitted to the California air resources board.

**(5) Warranty requirements.**

(a) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements in California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(b) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must include the emission control system warranty statement that complies with the requirements in California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer must provide a telephone number appropriate for Washington residents.

(c) All manufacturers must submit to ecology failure of emission-related components reports as defined in California Code of Regulations, Title 13, section 2144 for vehicles subject to this chapter. For purposes of compliance with this requirement, manufacturers may submit copies of the failure of emission-related components reports that are submitted to the California air resources board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if notified by ecology.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-070, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 19-02-056 (Order 18-11), § 173-423-070, filed 12/27/18, effective 1/27/19; WSR 16-12-099 (Order 16-01), § 173-423-070, filed 5/31/16, effective 7/1/16; WSR 12-24-033 (Order 11-01), § 173-423-070, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.120A.010 and 70.120A.050. WSR 09-03-077 (Order 08-16), § 173-423-070, filed 1/15/09, effective 2/15/09. Statutory Au-

thority: RCW 70.120A.010. WSR 05-24-044, § 173-423-070, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-075 Zero-emission vehicle standards. (1) Requirement to meet California vehicle emission standards - Passenger cars, light-duty trucks, and medium-duty vehicles.**

(a) Applicability.

(i) Starting with model year 2025, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1962.2 and 1962.3, adopted by reference in WAC 173-423-030((-)); and

(ii) Starting with model year 2026, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with the following sections of the California Code of Regulations, Title 13, adopted by reference in WAC 173-423-030:

"(G) 1962.4. Zero-Emission Vehicle Standards for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(H) 1962.5. Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles;

(I) 1962.6. Battery Labeling Requirements;

(J) 1962.7. In-Use Compliance, Corrective Action and Recall Protocols for Zero Emission for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(K) 1962.8. Warranty Requirements for Zero Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;"

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, sections ~~(1962.3)~~ 1962.2 and 1962.4.

(c) ZEV credits and values.

(i) ZEV credits may ~~((only))~~ be earned ~~((by model year 2025 and subsequent vehicles))~~ for ZEV sales of model year 2023, 2024, and 2025 vehicles, as allowed by California Code of Regulations, Title 13, section 1962.2 (Advanced Clean Cars I).

(ii) ZEV values may be earned as allowed by California Code of Regulations, Title 13, section 1962.4 (Advanced Clean Cars II).

**(2) Requirement to meet California vehicle emission standards - On-road vehicles over 8,500 GVWR.** (California advanced clean trucks regulation)

(a) Applicability. Starting with model year 2025, any manufacturer that certifies on-road vehicles over 8,500 pounds GVWR for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1963 through 1963.5, adopted by reference in WAC 173-423-030.

(i) Section 1963. Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements;

(ii) Section 1963.1. Advanced Clean Trucks Deficits;

(iii) Section 1963.2. Advanced Clean Trucks Credit Generation, Banking, and Trading;

(iv) Section 1963.3. Advanced Clean Trucks Compliance Determination;

(v) Section 1963.4. Advanced Clean Trucks Reporting and Record-keeping; and

(vi) Section 1963.5. Advanced Clean Trucks Enforcement.

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, section 1963.4.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-075, filed 11/29/21, effective 12/30/21.]

#### NEW SECTION

**WAC 173-423-081 Medium- and heavy-duty vehicle emission standards.** (1) Requirements to meet California vehicle emission standards. These standards establish criteria and procedures for the manufacture, testing, distribution and sale of new on-highway medium- and heavy-duty trucks and engines in Washington as adopted by reference in WAC 173-423-030.

(2) Applicability.

(a) Starting with model year 2026, on-highway heavy-duty engines, trucks and trailers delivered for sale or sold in Washington, except as provided in WAC 173-423-060, must comply with California Code of Regulations, Titles 13 and 17, adopted by reference in WAC 173-423-030.

(b) Requirement to meet vehicle emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference.

(i) Starting with the 2026 engine model year and for each engine model year thereafter no person may deliver for sale, or sell, in Washington any new on-highway heavy-duty engine unless the engine is certified to the California emission standards as required under WAC 173-423-030, except as provided in WAC 173-423-060 Exemptions.

(ii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 13 adopted by reference in WAC 173-423-030:

(A) Section 1956.8 (a) - (f) and (i) Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles. Except that California Code of Regulations, Title 13, Section 1956.8 (a) (2) (F) "Transit Agency Diesel-Fueled Bus Engine Exemption Request" must be disregarded and is not incorporated by reference;

(B) Section 1971.1 On-Board Diagnostic System Requirements - 2010 and Subsequent Model-Year Heavy-Duty Engines;

(C) Section 2036 Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles;

and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers;

(D) Section 2121 Penalties;

(E) Section 2137 Vehicle, Engine, and Trailer Selection;

(F) Section 2139 Testing;

(G) Section 2139.5 CARB Authority to Test for Heavy-Duty In-Use Compliance;

(H) Section 2140 Notification and Use of Test Results;

(I) Section 2166 General Provisions;

(J) Section 2166.1 Definitions;

(K) Section 2167 Required Recall and Corrective Action for Failures of Exhaust After Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors;

(L) Section 2168 Required Corrective Action and Recall for Emission-Related Component Failures;

(M) Section 2169 Required Recall or Corrective Action Plan;

(N) Section 2169.1 Approval and Implementation of Corrective Action Plan;

(O) Section 2169.2 Notification of Owners;

(P) Section 2169.3 Repair Label;

(Q) Section 2169.4 Proof of Correction Certificate;

(R) Section 2169.5 Preliminary Tests;

(S) Section 2169.6 Communication with Repair Personnel;

(T) Section 2169.7 Recordkeeping and Reporting Requirements;

(U) Section 2169.8 Extension of Time;

(V) Section 2423(n) Exhaust Emission Standards and Test Procedures - Off-Road Compression-Ignition Engines; and

(W) Section 2485 Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.

(iii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 17 adopted by reference in WAC 173-423-030:

(A) Section 95660 Purpose;

(B) Section 95661 Applicability;

(C) Section 95662 Definitions; and

(D) Section 95663 Greenhouse Gas Exhaust Emission Standards and Test Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles.

(3) Recalls. Any order issued or enforcement action taken by the California Air Resources Board to correct noncompliance with any section of California Code of Regulations, Title 13, that results in the recall of any vehicle as required under California Code of Regulations, Title 13, sections 2109 - 2135, for a vehicle subject to the requirements adopted by reference in WAC 173-423-030, will be prima facie evidence concerning vehicles registered in Washington. If the manufacturer can demonstrate to ecology's satisfaction that the order or action is not applicable to vehicles registered in Washington, ecology will not pursue a recall of vehicles registered in Washington.

(4) Inspections and Information Requests.

(a) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this section. Ecology inspections will occur during regular business hours on public property or on any premises owned, operated,



or used by any truck dealer or truck rental agency for the purposes of determining compliance with the requirements of this division.

(b) For the purposes of determining compliance with this section, ecology may require any truck dealer or truck rental agency to submit to ecology any documentation that ecology deems necessary to the effective administration and enforcement of this section. This provision does not require creation of new records.

[ ]

#### NEW SECTION

##### **WAC 173-423-083 Fleet reporting requirement. (1) Applicability.**

(a) Except as provided in subsection (2) of this section, the following persons must submit to ecology all of the information in subsection (3) of this section. As used in this section, all operations conducted by persons under common ownership or control must be aggregated and considered to be one person to determine fleet reporting applicability.

(i) Any person that owns or operates a business with gross annual revenues greater than \$50,000,000 in the United States for the 2022 tax year, including revenues from all subsidiaries, subdivisions, or branches, and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds GVWR operated in Washington in 2022.

(ii) Any person that owns or operates a facility in Washington and that, in the 2022 calendar year, owned or operated five or more vehicles with a GVWR greater than 8,500 pounds.

(iii) Any person that operated a facility in Washington and that, in the 2022 calendar year, dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.

(iv) Any Washington government agency, including state and local government, that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(v) Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(b) The following vehicles and persons are exempt from the reporting requirements in this section:

- (i) Vehicles awaiting sale; and
  - (ii) Authorized emergency vehicles.
- (2) General requirements.

(a) All persons required to report under this rule must report information to ecology no later than September 30, 2023.

(b) Subsidiaries, parent companies, or joint ventures may independently report information for each vehicle over 8,500 pounds. Alternatively, the corporate parent or joint venture business may report on behalf of its subsidiaries, as long as the information for all vehicles over 8,500 pounds is reported for each subsidiary, corporate parent, and joint venture.

(c) A person subject to this subsection and that has brokerage or motor carrier authority, or both, must submit a report, even if no vehicles are owned by the person.

(d) Information pertaining to vehicles that are under common ownership or control may be submitted separately by each fleet owner.

(e) A person that is a fleet owner may report vehicle data as the fleet was comprised on any date of the person's choosing, so long as that date falls between January 1, 2022, and December 31, 2022.

(3) Fleet reporting requirement. A person required to report under this section must report the information according to the requirements of each provision of this section. The reporting must include information for each and every operation under common ownership or control.

(a) General information.

(i) Name (i.e., if a business, the registered business name) and all business names that the person does business as (i.e., all "dba" or "doing business as" names);

(ii) Mailing address including street name or P.O. box, city, state, and zip code;

(iii) Name of the responsible official;

(iv) Responsible official's email address;

(v) Responsible official's phone number;

(vi) Name of corporate parent or governing body, as applicable;

(vii) Federal taxpayer identification number of corporate parent or other persons with which the reporting person has vehicles under common or control;

(viii) For a government agency, the jurisdiction (federal, state, or local); federal taxpayer identification number; primary six-digit North American Industry Classification System code;

(ix) For a nongovernmental person, the total annual revenue for the person in the United States for 2022;

(x) Broker authority under the Federal Motor Carrier Safety Administration;

(xi) The operating authority numbers, including motor carrier identification number, United States Department of Transportation number, and International Registration Plan number;

(xii) The number of persons with whom the reporting person had a contract to deliver items or to perform work in Washington using vehicles over 8,500 pounds GVWR in 2022;

(xiii) The estimated number of subhaulers, vehicles operated by subhaulers, and the number of vehicles operated by subhaulers that operated under the reporting person's motor carrier authority; and

(xiv) The number of vehicles with a GVWR over 8,500 pounds the reporting person owned and operated in Washington in 2022 that do not have a vehicle home base in Washington.

(b) Vehicle home base. A person required to report under this section must report general information about the vehicle home base. Vehicles that accrue a majority of their annual miles in Washington but are not assigned to a particular location in Washington must be reported as part of the person's headquarters or the location where the vehicles' operation is managed. The person must report for each vehicle home base:

(i) Facility address including street name, city, state, and zip code;

(ii) Facility type category, using one of the following categories:

(A) Administrative/office building;

(B) Distribution center/warehouse;

(C) Hotel/motel/resort;

(D) Manufacturer/factory/plant;

(E) Medical/hospital/care;

(F) Multibuilding campus/base;

- (G) Restaurant;
- (H) Service center;
- (I) Store;
- (J) Truck/equipment yard; and
- (K) Any other facility type;
- (iii) Name of responsible official;
- (iv) Responsible official's email address;
- (v) Whether the facility is owned or leased by the person;
- (vi) What type of fueling infrastructure is installed at the facility;
- (vii) Whether the refueling infrastructure at the facility was initially installed on or after January 1, 2010; and
- (viii) The types of trailers the reporting person pulls, if it has tractors assigned or domiciled at this facility.
- (c) For each vehicle home base, a person may report the information grouped by vehicle body type, and weight class bins and fuel type. A person may complete responses for each individual vehicle and include the vehicle's body type, weight class bin, and fuel type. If applicable, a person must separately report vehicles dispatched under their brokerage authority. When responding, each vehicle must only be counted once for each response. A person must report:
  - (i) Number of vehicles in each vehicle group;
  - (ii) Model year of the vehicle and engine for each reported vehicle;
  - (iii) The percent of the vehicles in each vehicle group with operating characteristics including, but not limited to: Daily mileage, usage patterns, refueling, trailer towing, and other such characteristics as specified by ecology. The term "usage pattern" shall include:
    - (A) Average number of trips per day;
    - (B) Typical destination points for vehicles within each group;
    - (C) Locations where trucks are parked for two hours or more per day, if different from the vehicle home base;
  - (iv) The average annual mileage for a typical vehicle in this vehicle group;
  - (v) The average length of time a typical vehicle in this vehicle group is retained by the reporting entity after acquisition;
  - (vi) Whether the reporting person is the fleet owner for this group of vehicles, or if they are dispatched under the reporting person's brokerage authority; and
  - (vii) The start and end date of the analysis period selected by the reporting person as required under (d) of this subsection.
- (d) A person must choose a period of time, for example annual or quarterly data averaged for work days during the period selected to determine responses. For example, if an entity selects annual data to determine vehicle daily mileage, the person must average the annual mileage accrued based on the number of work days that year.
  - (i) A shorter analysis period may be used if the reporting person deems it more representative of periods of high vehicle utilization when answering questions about typical daily operation. For example, if a reporting person with seasonal workload fluctuations determines that a week or month during the busy season is representative, average the data records for that week or month when determining a response.
  - (ii) If an alternative analysis period is used, the reporting person must be prepared to describe their reasoning at the request of ecology.
- (e) For information reported for a vehicle group at one location, a reporting person may repeat that information for the same vehicle

group at another vehicle home base if the reporting person determines that the operation at the second location is substantially similar to that at the first location.

(f) A broker must provide information about vehicle usage that is dispatched under contract, such as if a broker hires a truck to move a load, only the miles driven under that contract are required for the response. If known, the broker may voluntarily report information about the miles driven outside the contract.

(4) Fleet reporting recordkeeping.

(a) A person required to report must maintain all of the following records related to the reporting for five years after the reporting deadline:

(i) For owned on-road vehicles, mileage records and dates from records, such as maintenance logs, vehicle logs, or odometer readings, or other records with the information that the reporting person used to prepare the information the person submitted;

(ii) For on-road vehicles not owned, but dispatched by the person, dispatch records and dates, contracts, or other records with the information that the reporting person used to prepare the information the person submitted;

(iii) Vehicle registration for each owned vehicle operated in Washington; and

(iv) Contracts with persons, or contracts with subhauliers, or other records with the information that the reporting person used to prepare the information the person submitted.

(b) A person subject to this section must respond to requests for clarification of reported information within 14 days of receiving the request from ecology.

[ ]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

**WAC 173-423-130 (~~(Surveillance-)~~) Inspections and information requests.** (1) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this chapter. Ecology inspections must occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency.

(2) For the purposes of determining compliance with this chapter, ecology may require a vehicle dealer or rental car agency to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter. This provision does not require creation of new records.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-130, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-130, filed 11/30/05, effective 12/31/05.]