

WSR 23-07-131

EXPEDITED RULES

DEPARTMENT OF ECOLOGY

[Order 22-17—Filed March 22, 2023, 8:18 a.m.]

Title of Rule and Other Identifying Information: Chapter 173-442 WAC, Clean air rule (CAR).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of ecology (ecology) proposes to repeal chapter 173-442 WAC, CAR. The rule is no longer necessary because its functions have been preempted and replaced by chapter 173-446 WAC, Climate Commitment Act (CCA) (RCW 70A.65.200 (9)(c)).

Reasons Supporting Proposal: CCA directs ecology to repeal chapter 173-442 WAC, CAR.

CAR was a previous effort to address climate change. On August 13, 2015, Governor Inslee directed ecology to "develop and adopt a rule to place a binding cap on carbon pollution emissions" in Washington state. As a result, chapter 173-442 WAC, CAR, was adopted in September 2016.

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

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

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

Given all these developments, the rule is no longer in effect and for these reasons, ecology is preparing to repeal CAR using an expedited rule-making process.

Statutory Authority for Adoption: Washington Clean Air Act, chapter 70A.15 RCW; CCA, chapter 70A.65 RCW.

Statute Being Implemented: RCW 70A.65.200 (9)(c).

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Gopika Patwa, Lacey, 360-338-2419.

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rule is no longer necessary because its functions have been replaced by the 2021 CCA.

NOTICE

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

tal Relations, P.O. Box 47600, Olympia, WA 98503-7600, phone 360-480-1106, email ecyrerulemaking@ecy.wa.gov, AND RECEIVED BY May 22, 2023.

March 21, 2023
Heather R. Bartlett
Deputy Director

OTS-4253.1REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-442-010	Scope.
WAC 173-442-020	Definitions.
WAC 173-442-030	Applicability.
WAC 173-442-040	Exemptions.
WAC 173-442-050	Baseline GHG emissions value for non-EITE covered parties.
WAC 173-442-060	GHG emission reduction pathway.
WAC 173-442-070	GHG emission reduction pathway and emission reduction requirement for EITE covered parties.
WAC 173-442-100	Emission reduction units.
WAC 173-442-110	Generating emission reduction units.
WAC 173-442-120	Recording emission reduction units.
WAC 173-442-130	Banking emission reduction units.
WAC 173-442-140	Exchanging emission reduction units.
WAC 173-442-150	Criteria for activities and programs generating emission reduction units.
WAC 173-442-160	Activities and programs recognized as generating emission reduction units.
WAC 173-442-170	Limitations on the use of allowances.
WAC 173-442-200	Demonstrating compliance.
WAC 173-442-210	Compliance report.
WAC 173-442-220	Verification.
WAC 173-442-230	Registry.
WAC 173-442-240	Reserve.
WAC 173-442-250	Compliance report and verification due date.
WAC 173-442-320	Program review.
WAC 173-442-330	Air operating permit.
WAC 173-442-340	Enforcement.

WAC 173-442-350 Confidentiality.
WAC 173-442-360 Addresses.
WAC 173-442-370 Severability.