



DEPARTMENT OF
ECOLOGY
State of Washington

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-423 WAC, Low Emission Vehicles

01/06/09
Publication: 09-02-001

As required by the Washington State Administrative Procedures Act, RCW 34.05.

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
CHAPTER 173-423 WAC, Low Emission Vehicles

Prepared by:
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Washington State Department of Ecology
Air Quality Program

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- ◆ Identify the reasons for adopting this rule (RCW 34.05.325(6)(a)(i)):
The Washington Legislature requires automotive emissions standards to be consistent with California low emission vehicles standards in Title 13 of the California Code of Regulations. The federal Clean Air Act allows states to opt into the California clean car program and requires that states who opt in maintain consistency with the California vehicle emission standards. RCW 70.120A.010 directs Ecology to “amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards.” This rule-making will incorporate by reference (IBR) the latest version of Title 13 of the California Code of Regulations into Chapter 173-423 WAC. The update includes California’s EP label program, which also fulfills the requirements of RCW 70.120A.050.
- ◆ Identify the adoption date of rule and effective date of rule.
The adoption date of the rule is January 14, 2009, as required in RCW 80.80. The effective date is 31 days after the rule is filed with the Code Reviser.

II. Describe Differences Between Proposed and Final Rule

- ◆ Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference.

1. Table 070(1) California Code of Regulations (CCR) Title 13 Provisions Incorporated by Reference Effective in Washington January ~~14~~, ((2006)) 2009

Reason: Effective date for Table 070(1) was updated to match the rule adoption date.

III. Response to Comments

- ◆ Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so (RCW 34.05.325(6)(a)(iii)):

No testimony was given at the public hearing, and only one comment was received during the comment period. The comment and response are as follows:

Comment 1 from Steven P. Douglas, Alliance of Automobile Manufacturers, December 1, 2008:

The Alliance of Automobile Manufacturers is a trade association for eleven car and light truck manufacturers representing over 80 percent of new vehicle market in Washington. We appreciate both the efforts of the Department of Ecology to maintain consistency with California regulations and the opportunity to provide comments on the proposed changes.

The Department of Ecology (hereafter, "the Department") proposes two changes to maintain consistency with California regulations as required by the Clean Air Act (CAA): 1) a new environmental performance label; and 2) changes to the Emission Warranty Information Reporting and Recall requirements. This letter addresses each of these in turn.

Environmental Performance Label

Again, we appreciate that the Department's intent to maintain consistency with California by not requiring unique labels, which would be extremely burdensome on automakers and dealers while providing no added benefits. California regulations require automakers to place an Environmental Performance Label (EPL) on all 2009 and later model year (MY) passenger cars, light-duty trucks, and medium-duty passenger vehicles produced after January 1, 2009. Automakers are also allowed to use the EPL instead of the Smog Index Label on earlier MY vehicles provided the automaker obtains California Air Resources Board (CARB) approval beforehand.

Just to be clear, consistent with Section 177 of the CAA, automakers will place the EPL on all Washington vehicles in the exact same fashion as on California vehicles (e.g., Washington vehicles will have the same label installed in the same location as California vehicles).

Emission Warranty Information Reporting and Recall

These regulations have been finalized and approved by CARB; however, these regulations are the subject of state litigation in the California Superior Court for the county of Los Angeles (Automotive Service Councils of California v. CARB and Engine Manufacturers Association v. CARB; consolidated Case Number: BS112735). The Alliance is not a party to this litigation, but urges the Department to consider delaying adoption of this regulation until the litigation is concluded. Waiting a short time may be worthwhile considering these regulations apply to 2010 model year vehicles.

Again, the Alliance appreciates the quick action by the Department to maintain consistency with California regulations. If you have any questions or need any

additional information please do not hesitate to call me at (916) 266-4532 or email me at sdouglas@autoalliance.org.

Ecology Response:

Ecology thanks you for your comments. Ecology agrees that the most cost-effective method of implementing a greenhouse gas label in accordance with RCW 70.120A.050 is to adopt California's Environmental Performance (EP) label by reference. California's label program is explicitly referenced in RCW 70.120A.050(5) as acceptable and also is compatible with RCW 70.120A.010. Ecology's intention is that the EP label should be used in accordance with California Air Resources Board (CARB) guidelines. This includes use on model year 2008 and older vehicles with prior CARB approval and label placement protocols.

Ecology is aware of *Automotive Service Councils of California v. CARB* and *Engine Manufacturers Association v. CARB*; consolidated Case Number: BS112735. Ecology will continue to track the litigation and make any necessary rule amendments at a later date. Currently the Emission Warranty Information Reporting and Recall (EWIR) regulations are part of California's clean car program and therefore included in this rule update in accordance with RCW 70.120A.010.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

List or describe:

- ◆ hearing dates and locations
*Ecology Headquarters Building, Lacey
December 9, 2008, 7:00PM
0 members of the public attended or testified*
- ◆ mass mailing pieces (i.e., FOCUS sheet, news releases)
*News releases:
10/02/2008 – Ecology adding emissions label, updating “clean cars” rule
12/04/2008 – Ecology holds hearing on clean cars update, vehicle label*
- ◆ advertisements and/or newspaper announcements
*11/08/2008 - The Daily Journal of Commerce – Public Hearing Notice
11/08/2003 – Notice of hearing published on Ecology's online public involvement calendar*

V. Appendices

The following is a list of suggested appendices that you should include in your CES:

- ◆ Appendix A: Written Comment
- ◆ Appendix B: Public Notices
- ◆ Appendix C: Final Rule Text

Appendix A: Written Comment

Comment 1:



December 1, 2008

VIA ELECTRONIC MAIL TO ncau461@ecy.wa.gov and brud461@ecy.wa.gov

Mr. Neil Caudill
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Air Pollution Control Regulations, Subchapter XI, Low Emission Vehicles

Dear Mr. Caudill,

The Alliance of Automobile Manufacturers is a trade association for eleven car and light truck manufacturers representing over 80 percent of new vehicle market in Washington. We appreciate both the efforts of the Department of Ecology to maintain consistency with California regulations and the opportunity to provide comments on the proposed changes.

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Just to be clear, consistent with Section 177 of the CAA, automakers will place the EPL on all Washington vehicles in the exact same fashion as on California vehicles (e.g., Washington vehicles will have the same label installed in the same location as California vehicles).

BMW Group • Chrysler LLC • Ford Motor Company • General Motors • Jaguar Land Rover
Mazda • Mercedes-Benz • Mitsubishi Motors • Porsche • Toyota • Volkswagen

1415 L Street—Suite 1190, Sacramento, CA 95814 • Phone 916.447.7315 • Fax 916.447.7349 • www.autoalliance.org

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Again, the Alliance appreciates the quick action by the Department to maintain consistency with California regulations. If you have any questions or need any additional information please do not hesitate to call me at (916) 266-4532 or email me at sdouglas@autoalliance.org.

Sincerely,



Steven P. Douglas

cc: Brett Rude

Appendix B: Public Notices

10/02/2008 – Ecology adding emissions label, updating “clean cars” rule:

Department of Ecology News Release - October 2, 2008

08-271

Ecology adding vehicle emissions label, updating "clean cars" rule

OLYMPIA – Beginning next year, car buyers in Washington state will be aided by a new label that details a new vehicle’s emissions of climate-changing greenhouse gases.

The 2008 Legislature directed the Washington Department of Ecology (Ecology) to develop an “environmental performance” label that displays clear, easy-to-understand information about new vehicles’ emissions of greenhouse gases and smog. The labels are expected to be ready for use in early 2009. They must be displayed on each new passenger car, light-duty truck and medium-duty passenger vehicles (such as most vans and SUVs) sold in Washington. Vehicles in those categories can’t be sold without a label.

See an example of a label here:

http://www.ecy.wa.gov/programs/air/cleancars.htm#What_is_the_Environmental_Performance_Label.

Legislators say the labels can help educate the public about the sources of greenhouse gases and their impacts on Washington’s environment. The transportation sector – passenger vehicles, freight and construction vehicles, ships, airplanes and trains – emits about 47 percent of greenhouse gases in Washington. That makes it the state’s largest single contributor of such gases.

In addition, Ecology is making required updates to the state’s low-emission vehicle (“clean car”) standards, which the Washington Legislature and Gov. Chris Gregoire adopted in 2005. Washington’s standards are the same as California’s, which are more stringent than federal requirements. The federal Clean Air Act allows states to adopt California’s standards. When the California standards change, Washington’s standards must be updated to remain consistent.

Beginning with the 2009 model year, Washington’s standards apply to passenger cars, light-duty trucks and medium-duty passenger vehicles. They don’t apply to vehicles already owned by Washington residents. Find more information here: <http://www.ecy.wa.gov/programs/air/cleancars.htm>.

You can follow Ecology’s work at <http://www.ecy.wa.gov/laws-rules/activity/wac173423.html>. Ecology staff plans to hold a public hearing in December. Details will be announced soon.

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Media Contact: Seth Preston, Ecology communications manager, 360-407-6848; 360-584-5744 cell; spre461@ecy.wa.gov

**12/04/2008 – Ecology holds hearing on clean cars update, vehicle label:
Department of Ecology News Release - December 4, 2008**

08-316

Ecology holds hearing on "clean cars" update, vehicle label

OLYMPIA – A public hearing next week will focus on updates to the state's "clean cars" rule, including requiring a label that describes a new vehicle's emissions of climate-changing greenhouse gases.

The 2008 Legislature directed the Washington Department of Ecology (Ecology) to develop an easy-to-understand label that shows new vehicles' emissions of greenhouse gases and smog. The label should be ready for use in early 2009. It must be displayed on each new passenger car, light-duty truck and medium-duty passenger vehicle (such as most vans and SUVs) sold in Washington. Those vehicles can't be sold without a label.

A public hearing on the rule update starts at 7 p.m. Tuesday, Dec. 9, in Ecology's auditorium at 300 Desmond Drive SE, Lacey.

Legislators say the label can help educate people about Washington's greenhouse gas sources. The transportation sector – passenger vehicles, freight and construction vehicles, ships, airplanes and trains – emits about 47 percent of Washington's greenhouse gases. That makes it the state's largest single source of such gases.

Ecology is adding the label along with making required updates to the state's low-emission vehicle ("clean car") standards. The 2005 Legislature and Gov. Chris Gregoire adopted California's standards, which are more strict than federal emissions limits. Federal law allows states to adopt California's standards. Washington must update its standards when California's standards change.

Beginning with 2009 models, the "clean car" standards apply to passenger cars, light-duty trucks and medium-duty passenger vehicles. They don't apply to vehicles already owned by Washington residents. Find more information at www.ecy.wa.gov/programs/air/cleancars.htm.

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Media Contact: Seth Preston, Ecology communications manager, 360-407-6848; 360-584-5744 cell; spre461@ecy.wa.gov

See an example of a label:

www.ecy.wa.gov/programs/air/cleancars.htm#What_is_the_Environmental_Performance_Label.

11/08/2008 – The Daily Journal of Commerce - Public Hearing Notice

Public Hearing on Proposed Update of “Clean Car” Rules (Chapter 173-423 WAC, Low Emission Vehicles)

There are two types of motor vehicle emission standards: federal standards and the usually stricter California clean car standards. The California clean car standards significantly reduce greenhouse gas emissions and other air pollution from cars and trucks. The federal Clean Air Act allows states to choose between adopting California clean car standards and using the federal standards. Washington has adopted California’s clean car standards. Washington law requires 2009 and newer vehicles to meet these low emission standards.

Why is Ecology updating the rule for clean car standards?

States that adopt California’s standards are required to keep them consistent with California’s. California recently updated its rules. Ecology is now updating Washington’s rules both to keep them consistent with California’s, and to meet the state law’s requirement for an environmental performance labeling program.

What will the proposed rule change do?

The proposed change will update Washington’s rules to include California’s rule updates. This will include adopting California’s “Green Car Labeling” program. The labeling program requires vehicles to have labels stating their greenhouse gas emissions. The purpose of this is to help educate vehicle buyers about different vehicles’ emissions.

How will this affect you?

Vehicle manufacturers and dealers will need to make sure vehicles are appropriately labeled. People purchasing 2009 or newer vehicles will more easily be able to find out about a vehicle’s greenhouse gas emissions.

How can you comment on this rule change?

Ecology welcomes public comments and will accept comments through December 16, 2008. You can comment at the public hearing, or by sending written comments to Neil Caudill as shown below:

Hearing date and location:

December 9, 2008
7:00 p.m.
Ecology HQ Building
Auditorium
300 Desmond Drive
Lacey, WA 98503

Contact information:

Neil Caudill
(360) 407-6811
ncau461@ecy.wa.gov
P.O. Box 47600
Olympia, WA 98504-7600

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Appendix C: Final Rule Text