



**Concise Explanatory Statement  
Chapter 173-423 WAC – Clean Vehicles  
Program  
Chapter 173-400 WAC – General Regulations  
for Air Pollution Sources**

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**Summary of Rulemaking and Response to Comments**

Washington State Department of Ecology  
Olympia, Washington

November 2021, Publication 21-02-030

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**Northwest Region**  
206-594-0000

**Central Region**  
509-575-2490

**Eastern Region**  
509-329-3400

Region	Counties Served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

# Concise Explanatory Statement

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**Chapter 173-423 WAC  
Clean Vehicles Program**

**Chapter 173-400 WAC  
General Regulations for Air Pollution Sources**

Air Quality Program  
Washington State Department of Ecology  
Olympia, WA

**November 2021 | Publication 21-02-031**



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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## Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide the Washington State Department of Ecology's (Ecology) response to public comments.

This Concise Explanatory Statement provides information on Ecology's rule adoption for:

WAC Chapter and Title: Chapter 173-423 WAC – Clean Vehicles Programs  
Chapter 173-400 WAC – General Regulations for Air Pollution Sources

Adopted date: November 29, 2021

Effective date: December 30, 2021

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

## Reasons for Adopting the Rule

Ecology revised two rules:

- Chapter 173-423 WAC – Low Emission Vehicles. The rule implements the California Advanced Clean Cars Program that combines the control of smog-causing (criteria) pollutants and greenhouse gas (GHG) emissions into a coordinated package of regulations.
- Chapter 173-400 WAC – General Regulations for Air Pollution Sources. The rule is our primary rule regulating air quality under the state and federal Clean Air Acts.

### Chapter 173-423 WAC – Renamed Clean Vehicles Program

As amended in 2020, RCW 70A.30.010 directs Ecology to:

- Adopt rules implementing California's vehicle emission standards, including the zero emission vehicle (ZEV) program.
- Amend rules to maintain consistency with California's rules and 42 U.S.C. Section 7507 (Section 177 of the Clean Air Act).

42 U.S.C. Section 7507 (Section 177 of the Clean Air Act) allows a state to adopt and enforce California's vehicle emission standards if their standards are identical to the California standards.

The Clean Air Act also requires a state to provide manufacturers with two-year advance notice before the start of a vehicle model year.

Current Washington rules adopt California's motor vehicle emission standards for low emission vehicles:

- Passenger cars: vehicles designed to transport up to 12 people
- Light-duty trucks: vehicles weighing less than 8,500 pounds
- Medium-duty passenger vehicles: vehicles weighing less than 10,000 pounds designed to transport people

Washington is expanding our program by adopting California's more protective vehicle emission standards for new vehicles sold in Washington, starting with model year 2025. This rulemaking expands vehicle emission standards to include:

- ZEV requirements that apply to passenger cars, light-duty trucks, and medium-duty vehicles (vehicles with a gross vehicle weight rating between 8,501 and 14,000 pounds such as trucks, SUVs, and vans). Manufacturers must sell a percentage of ZEV vehicles.
- ZEV requirements that apply to vehicles greater than 8,500 pounds gross vehicle weight rating. We adopt California's Advanced Clean Trucks rule. The rule applies to delivery vans, work trucks, long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles. Manufacturers must sell a certain percentage of ZEV trucks.
- Low emission vehicle requirements that apply to medium-duty vehicles; and updates to our existing requirements to ensure consistency with California's vehicle emission standards.

Motor vehicles are the largest source of air pollution in Washington. Transportation contributes about 22 percent of total air pollution and 45 percent of greenhouse gas emissions throughout the state.

- The purpose of the ZEV rules is to boost the use of ZEVs in Washington and to reduce harmful emissions from on-road mobile sources. Adopting the ZEV standard means Washington car buyers will have access to the widest range of electric and zero-emission vehicles possible – including models that they cannot buy here now.
- Washington's estimated annual emission reductions<sup>1</sup> in 2040 from adoption of one component of this rulemaking, the Advanced Clean Trucks rule, are:
  - 1,300 tons per year of nitrogen oxides
  - 14 tons per year of particulate matter
  - 650,000 metric tons of well-to-wheel carbon dioxide equivalent emissions.

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<sup>1</sup> The International Council on Clean Transportation. 2021. Benefits of adopting California medium- and heavy-duty vehicle regulations: Data for Washington State, November 2021, <https://theicct.org/benefits-ca-multi-state-reg-data>.



Adopting California’s rules will assist in reducing health risks to individuals impacted by the emissions from mobile sources. Having cleaner vehicles on the road will reduce air pollution in communities located along and near major transportation corridors, ports, industries, warehouses, and other areas with high volumes of truck traffic.

## **Chapter 173-400 WAC – General Regulations for Air Pollution Sources**

This chapter adopts many federal rules by reference because it is our primary rule regulating air quality under the state and federal Clean Air Acts. In Washington, we incorporate applicable federal rules by either copying the rule language into our state rules or adopting applicable federal rules by reference, as they exist at a specified adoption date.

In amending WAC 173-400-025, we:

- Updated the “adoption by reference” date to December 23, 2020, from January 24, 2018, to include more recent versions of federal rules; and
- Kept the definition of “project emissions accounting” for the Prevention of Significant Deterioration (PSD) Program for Washington sources. This means that the rule changes from the November 24, 2020, Federal Register notice (85 FR 74890) that went into effect on December 24, 2020, are not adopted by reference.

## **Overview of the Rulemaking Process**

This rulemaking started on June 22, 2021, at the rule proposal phase without first filing a preproposal statement of inquiry (CR-101). Rulemaking usually starts with the preproposal statement of inquiry. Ecology started this rulemaking at the rule proposal phase, as allowed by the Administrative Procedures Act in RCW 34.05.310 (4), because the Legislature in RCW 70A.30.010 directed us to adopt California’s rules as written.

To explain the proposal, we held two online public information sessions, one on July 19, 2021 during the day, and a second on July 21, 2021 in early evening. We posted the presentation from these meetings on our rulemaking website. The public comment period was open between July 22, 2021 and August 9, 2021. We held two public hearings, one during the day on July 27, 2021, and one in the evening on July 29, 2021.

## **Differences between the Proposed Rule and Adopted Rule**

RCW 34.05.325(6)(a)(ii) requires Ecology to 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, stating the reasons for the differences.

There are differences between the proposed rule filed on June 22, 2021 and the adopted rule filed on November 29, 2021. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

Ecology did not make any changes to the proposed rule that are substantially different from the original proposal. In making this determination, Ecology considered the following factors (RCW 34.05.340 (2)):

- The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect their interests.
- The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule.
- The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

Table 1 describes the changes from the proposed rule and Ecology’s reasons for making them.

Table 1. Changes in adopted rule

<b>Section in adopted rule</b>	<b>Change</b>	<b>Reason</b>
WAC 173-423-070 (2)(b)	Removes requirement to base compliance on vehicle delivery in Washington.	Removes restrictive provision to maintain consistency with California’s rules. Low emission vehicle rules allow pooling with California and all Section 177 states for fleet reporting of nonmethane organic gas.
WAC 173-423-070 (3)(c)	Removes requirement to base compliance on vehicle delivery in Washington.	Removes restrictive provision to maintain consistency with California’s rules. Low emission vehicle rules allow pooling between California and Section 177 states for fleet reporting of greenhouse gas emissions.
WAC 173-423-075 (1)(c)	Clarifies wording.	Clarifies confusing rule language that was too broad. New wording clarifies original intent to prohibit credit generation for zero emission vehicles before model year 2025 vehicles.
WAC 173-423-140	Deletes enforcement section.	Removes outdated enforcement penalties to maintain consistency with California’s rules, specifically Advanced Clean Trucks. Removal simplifies this requirement so the rule relies on penalty provisions in California’s rules, which are incorporated by reference.

Section in adopted rule	Change	Reason
WAC 173-423-150	Changes “section” to “provision.”	Clarifies that invalidation of a portion of a section will invalidate only that portion.
WAC 173-400-025 (1)	Changes adoption date to December 23, 2020.	Change clarifies original intent to update adoption date to most recent version of most federal rules, but retain EPA’s 2020 requirements for project emissions accounting for major sources.
WAC 173-400-025 (3)	Deletes subsection with exemptions.	There are no exemptions to this adoption by reference.
WAC 173-400-025 (4)	Deletes subsection with new requirements for existing municipal solid waste landfills	The requirements were not in effect on the adoption by reference date of December 23, 2020. They were in effect on June 21, 2021.

## List of Commenters and Topics

Ecology accepted comments from June 22, 2021, through August 9, 2021. We received 30 public comments during the official public comment period. Commenters submitted through Ecology’s web site, by email and testimony during public hearings. Table 2 presents the breakdown of each type of comment received.

Table 2. Comments received

Method of submission	Number received
Testimony at public hearing	9
Email	1
Web site submission	20

We summarized comments or provided them verbatim under each topic, with edits for clarity. You can see the original content of the comments we received at our [online comment website](https://aq.ecology.commentinput.com/comment/extra?id=SdA6s).<sup>2</sup> These comments remain available online for two years after the rule adoption date.

We organized the comments and responses by grouping them together by topics. Under each topic heading, we included all the public comments that Ecology received on that topic, followed by our summary response that addresses all the comments on that topic.

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<sup>2</sup> <https://aq.ecology.commentinput.com/comment/extra?id=SdA6s>

## Topics that are outside the scope of this rulemaking

BlueGreen Alliance, Joint Comments, Nikola Corp., Rivian Automotive, LLC, Truck & Engine Manufacturers Association and Western States Petroleum Association provided comments on the Clean Vehicles Program that are outside the scope of this rulemaking. These include:

- Requests for incentive programs for vehicle purchases
- Requests for investment in electric vehicle charging stations and supporting infrastructure
- Request to remove the state prohibition for direct vehicle sales from electric vehicle manufacturers. Tesla is the only automaker allowed to sell directly to consumers in Washington without having to sell through an independent franchised dealer network.
- Comments related to the electricity sector and pipeline network, including wholesale electric rates, time of use rates, minimizing demand charges, utility investments to support charging infrastructure, and siting of hydrogen pipelines within existing fossil gas pipeline rights-of-way
- Suggestions for statewide policy actions to improve the implementation of the ZEV program

We thank the commenters for their submissions highlighting these concerns and policy issues. Since these comments are outside the scope of this rulemaking, we will not respond to these comments individually.

## Topics

We classified comments into the following topics:

### Legal issues

- Adequate/inadequate legal authority
- Advanced Clean Trucks is a greenhouse gas standard
- Clarify advance notice requirement (model year)

### Rulemaking process

- Type of rulemaking process
- Costs and benefits (air quality, climate impacts, environmental justice, greenhouse gas emissions, increased consumer choices for ZEVs, infrastructure)

### Credits

- Proportional credits
- Use of credits in Advanced Clean Cars II
- Use of early action credits in Advanced Clean Trucks
- Use of early action credits in ZEV

## General topics

- Advanced Clean Trucks
- General comments on proposal
- Low NOx Omnibus Rule
- Require fleet reporting/regulate existing fleets
- WAC 173-400-025 Adoption by reference date
- WAC 173-423-070 (2) LEV credit pooling
- WAC 173-423-075 ZEV credits
- WAC 173-423-140 Enforcement penalties
- WAC 173-423-150 Severability clause

## List of commenters

We classified comments submitted by each commenter according to the topic they addressed.

Table 3. List of commenters, topics, and comment numbers

Affiliation	Commenter name	Topics where comments were assigned	Associated comment numbers
	Sharon Burke	Advanced Clean Trucks	I-3-1
	Sharon Burke	Costs and benefits – greenhouse gas emissions	I-3-2
	Bill McClain	General comments on proposal	I-2-1
	Alan Newman	WAC 173-400-025 Adoption by reference date	I-1-1
Alliance for Automotive Innovation	Steven Douglas	Advanced Clean Cars 2	O-5-4
Alliance for Automotive Innovation	Steven Douglas	Use of early action credits in ZEV	O-5-2
Alliance for Automotive Innovation	Steven Douglas	General comments on proposal	O-5-5
Alliance for Automotive Innovation	Steven Douglas	Proportional credits	O-5-3
Alliance for Automotive Innovation	Steven Douglas	WAC 173-423-070 LEV credit pooling	O-5-1
BlueGreen Alliance	Jessica Koski	Advanced Clean Trucks	O-2-2
BlueGreen Alliance	Jessica Koski	Costs and benefits – environmental justice	O-2-6
BlueGreen Alliance	Jessica Koski	Require fleet reporting / regulate existing fleets	O-2-3

<b>Affiliation</b>	<b>Commenter name</b>	<b>Topics where comments were assigned</b>	<b>Associated comment numbers</b>
BlueGreen Alliance	Jessica Koski	General comments on proposal	O-2-1
BlueGreen Alliance	Jessica Koski	Low NOx Omnibus Rule	O-2-4
BlueGreen Alliance	Jessica Koski	Policy concerns	
Ceres	Emily Duff	Advanced Clean Trucks	O-11-2
Ceres	Emily Duff	General comments on proposal	O-11-1
Ceres	Noah Howe	Advanced Clean Trucks	O-6-1
Ceres	Noah Howe	ACT cost	O-6-3
Ceres	Noah Howe	Costs and benefits – environmental justice	O-6-2
Ceres	Noah Howe	General comments on proposal	O-6-1
Climate Solutions	Leah Missik	Advanced Clean Trucks	O-12-2
Climate Solutions	Leah Missik	Costs and benefits – environmental justice	O-12-3
Climate Solutions	Leah Missik	Require fleet reporting / regulate existing fleets	O-12-5
Climate Solutions	Leah Missik	General comments on proposal	O-12-1
Climate Solutions	Leah Missik	Low NOx Omnibus Rule	O-12-4
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Use of early action credits in ACT	O-8-8
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Advanced Clean Trucks	O-8-2
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Costs and benefits – financial incentives	O-8-10
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Costs and benefits – environmental justice	O-8-9
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Require fleet reporting / regulate existing fleets	O-8-6
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	General comments on proposal	O-8-1
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Low NOx Omnibus Rule	O-8-7
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	Require fleet reporting / regulate existing fleets	O-8-5
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	WAC 173-423-140 Enforcement penalties	O-8-3
Earthjustice/Duwamish River Cleanup Coalition	Jaimini Parekh	WAC 173-423-150 Severability clause	O-8-4
Joint Comments	Annabel Drayton	Advanced Clean Cars 2	OTH-1-3
Joint Comments	Annabel Drayton	Use of early action credits in ACT	OTH-1-10

<b>Affiliation</b>	<b>Commenter name</b>	<b>Topics where comments were assigned</b>	<b>Associated comment numbers</b>
Joint Comments	Annabel Drayton	Advanced Clean Trucks	OTH-1-4
Joint Comments	Annabel Drayton	Costs and benefits – climate impacts	OTH-1-5
Joint Comments	Annabel Drayton	Use of early action credits in ZEV	OTH-1-2
Joint Comments	Annabel Drayton	ACT cost	OTH-1-6
Joint Comments	Annabel Drayton	Require fleet reporting / regulate existing fleets	OTH-1-11
Joint Comments	Annabel Drayton	General comments on proposal	OTH-1-1
Joint Comments	Annabel Drayton	Low NOx Omnibus Rule	OTH-1-13
Joint Comments	Annabel Drayton	Policy concerns	
Joint Comments	Annabel Drayton	Require fleet reporting / regulate existing fleets	OTH-1-14
Joint Comments	Annabel Drayton	WAC 173-423-140 Enforcement penalties	OTH-1-9
Joint Comments	Annabel Drayton	WAC 173-423-150 Severability clause	OTH-1-8
Joint Comments	Annabel Drayton	WAC 173-423-075	OTH-1-7
Matt Stevenson Consulting	Matthew Stevenson	Advanced Clean Trucks	B-1-1
Matt Stevenson Consulting	Matthew Stevenson	Costs and benefits – financial incentives	B-1-4
Matt Stevenson Consulting	Matthew Stevenson	Costs and benefits – infrastructure	B-1-3
Matt Stevenson Consulting	Matthew Stevenson	Require fleet reporting / regulate existing fleets	B-1-2
Natural Resources Defense Council (NRDC)	Simon Mui	Require fleet reporting / regulate existing fleets	O-13-5
NRDC	Simon Mui	Advanced Clean Cars 2	O-13-3
NRDC	Simon Mui	Advanced Clean Trucks	O-13-4
NRDC	Simon Mui	General comments on proposal	O-13-1
NRDC	Simon Mui	Adequate/inadequate legal authority	O-13-2
NRDC	Simon Mui	Low NOx Omnibus Rule	O-13-6
NRDC	Patricia Portillo	Advanced Clean Cars 2	O-9-5
NRDC	Patricia Portillo	Costs and benefits – climate impacts	O-16-1
NRDC	Patricia Portillo	Require fleet reporting / regulate existing fleets	O-16-4
NRDC	Patricia Portillo	General comments on proposal	O-16-2

<b>Affiliation</b>	<b>Commenter name</b>	<b>Topics where comments were assigned</b>	<b>Associated comment numbers</b>
NRDC	Patricia Portillo	Costs and benefits – increase consumer choices for ZEVs	O-9-3
NRDC	Patricia Portillo	Type of rulemaking process	O-9-2
NRDC	Patricia Portillo	Low NOx Omnibus Rule	O-16-3
NRDC	Patricia Portillo	WAC 173-423-150 Severability clause	O-9-7
NRDC	Patricia Portillo	WAC 173-423-075	O-9-6
NRDC	Patricia Portillo	Costs and benefits – air quality	O-9-4
Nikola Corp.	Omar Gonzales	General comments on proposal	B-3-1
Nikola Corp.	Omar Gonzales	Costs and benefits – financial incentives	B-3-3
Nikola Corp.	Omar Gonzales	Costs and benefits – infrastructure	B-3-5
Nikola Corp.	Omar Gonzales	Policy concerns	
Nikola Corp.	Omar Gonzales	Require fleet reporting / regulate existing fleets	B-3-4
Northwest Pulp and Paper Association	Kathryn VanNatta	WAC 173-400-025 Adoption by reference date	O-7-1
Northwest Pulp and Paper Association	Kathryn VanNatta	Rule process	O-7-2
NW Energy Coalition	Annabel Drayton	Costs and benefits	O-10-3
NW Energy Coalition	Annabel Drayton	Advanced Clean Trucks	O-10-2
NW Energy Coalition	Annabel Drayton	Fleet owners	O-10-4
NW Energy Coalition	Annabel Drayton	General comments on proposal	O-10-1
Puget Sound Clean Air Agency	Craig Kenworthy	Costs and benefits – environmental justice	A-2-3
Puget Sound Clean Air Agency	Craig Kenworthy	General comments on proposal	A-2-1
Puget Sound Clean Air Agency	Craig Kenworthy	Costs and benefits – increase consumer choices for ZEVs	A-2-2
Puget Sound Clean Air Agency	Craig Kenworthy	Low NOx Omnibus Rule	A-2-4
Puget Sound Clean Air Agency	Sara Nichols	Costs and benefits – environmental justice	A-3-3
Puget Sound Clean Air Agency	Sara Nichols	General comments on proposal	A-3-1
Puget Sound Clean Air Agency	Sara Nichols	Costs and benefits – increase consumer choices for ZEVs	A-3-4
Puget Sound Clean Air Agency	Sara Nichols	Costs and benefits – greenhouse gas emissions	A-3-2
Rivian Automotive, LLC	Tom Van Heeke	Use of early action credits in ZEV	B-2-3



<b>Affiliation</b>	<b>Commenter name</b>	<b>Topics where comments were assigned</b>	<b>Associated comment numbers</b>
Rivian Automotive, LLC	Tom Van Heeke	General comments on proposal	B-2-1
Rivian Automotive, LLC	Tom Van Heeke	Policy concerns	
Rivian Automotive, LLC	Tom Van Heeke	Advanced Clean Trucks	B-2-2
Sierra Club	Tim Gould	Advanced Clean Trucks	O-15-2
Sierra Club	Tim Gould	Costs and benefits – environmental justice	O-15-3
Sierra Club	Tim Gould	Require fleet reporting / regulate existing fleets	O-15-4
Sierra Club	Tim Gould	General comments on proposal	O-15-1
Sierra Club	Tim Gould	Low NOx Omnibus Rule	O-15-5
Sierra Club	Tim Gould	Costs and benefits – climate impacts	O-15-6
Tesla	Thad Kurowski	Advanced Clean Trucks	B-4-2
Tesla	Thad Kurowski	Costs and benefits – air quality	B-4-5
Tesla	Thad Kurowski	Costs and benefits – climate impacts	B-4-7
Tesla	Thad Kurowski	Use of early action credits in ZEV	B-4-3
Tesla	Thad Kurowski	Costs and benefits – environmental justice	B-4-6
Tesla	Thad Kurowski	General comments on proposal	B-4-1
Tesla	Thad Kurowski	Proportional credits	B-4-4
The Northwest Seaport Alliance	The Northwest Seaport Alliance	Costs and benefits	A-1-3
The Northwest Seaport Alliance	The Northwest Seaport Alliance	Costs and benefits – financial incentives	A-1-2
The Northwest Seaport Alliance	The Northwest Seaport Alliance	General comments on proposal	A-1-1
Truck & Engine Manufacturers Association	Timothy French <sup>3</sup>	Advanced Clean Trucks	O-1-1, O-17-1, O-19-1
Truck & Engine Manufacturers Association	Timothy French	Policy concerns	
Truck & Engine Manufacturers Association	Timothy French	Adequate/inadequate legal authority	O-1-2, O-17-6 ,
Truck & Engine Manufacturers Association	Timothy French	Clarify advance notice requirement (model year)	O-1-3, O-17-2, O-19-4
Truck & Engine Manufacturers Association	Timothy French	Low NOx Omnibus Rule	O-1-4, O-17-4

<sup>3</sup> Commenter provided written copy of oral testimony because recording was faulty.

<b>Affiliation</b>	<b>Commenter name</b>	<b>Topics where comments were assigned</b>	<b>Associated comment numbers</b>
Truck & Engine Manufacturers Association	Timothy French	ACT cost	O-1-6, O-17-8
Truck & Engine Manufacturers Association	Timothy French	Costs and benefits – infrastructure	O-17-3
Truck & Engine Manufacturers Association	Timothy French	ACT is a greenhouse gas standard	O-17-7
Truck & Engine Manufacturers Association	Timothy French	Costs and benefits – financial incentives	O-19-2
Union of Concerned Scientists	Akashdeep Singh	Advanced Clean Trucks	O-14-2
Union of Concerned Scientists	Akashdeep Singh	Costs and benefits – environmental justice	O-14-4
Union of Concerned Scientists	Akashdeep Singh	Require fleet reporting / regulate existing fleets	O-14-3
Union of Concerned Scientists	Akashdeep Singh	General comments on proposal	O-14-1
Western States Petroleum Association	Robert Poole	WAC 173-400-025 Adoption by reference date	O-3-2
Western States Petroleum Association	Robert Poole	Policy concerns	
Zero Emission Transportation Association	Joe Britton	Advanced Clean Trucks	O-4-1
Zero Emission Transportation Association	Joe Britton	Use of early action credits in ZEV	O-4-2

The BlueGreen Alliance, Ceres, and “Joint Comments” each provided a comment letter signed by many organizations. Table 4 lists the organization that signed the letter (affiliation), commenter name when provided, and organization that submitted the comment letter.

Table 4. List of signers to letters from BlueGreen Alliance, Ceres, and Joint Comments

<b>Affiliation</b>	<b>Commenter name</b>	<b>Comment submitted by</b>
AMPLY Power		Ceres
Appropriate Technology Group		Ceres
Aspen Skiing Company		Ceres
Avocado Green Mattress		Ceres
Ben and Jerry's		Ceres
BlueGreen Alliance	Jessica Koski	BlueGreen Alliance
Boston Common Asset Management		Ceres
California Health Care		Ceres
Certified Electrical Workers of Washington	Matthew A. Hepner	BlueGreen Alliance
Climate Alliance		Ceres

<b>Affiliation</b>	<b>Commenter name</b>	<b>Comment submitted by</b>
Climate Solutions	Leah Missik	BlueGreen Alliance
Climate Solutions	Leah Missik	Joint Comments
Congregation of St. Joseph		Ceres
Daughters of Charity, Province of St. Louise		Ceres
Domini Impact Investment		Ceres
DSM North America		Ceres
Duwamish River CleanUp Coalition	Adrienne Hampton	BlueGreen Alliance
eBay		Ceres
ECOS Corporation		Ceres
Forth	Rhett Lawrence	Joint Comments
Hemp Ace International		Ceres
IBEW Local 191	John Traynor	BlueGreen Alliance
IBEW Local 46	Keith J. Weir	BlueGreen Alliance
IBEW Local 46	Keith J. Weir	Joint Comments
IKEA Retail U.S.		Ceres
Independence Solar		Ceres
Legacy Vacation Resorts		Ceres
Lime Macroclimate		Ceres
Mercy Investment Services, Inc.		Ceres
Mountain Gear		Ceres
Natural Investments, LLC.		Ceres
Natural Resources Defense Council	Patricio Portillo	BlueGreen Alliance
Nestlé		Ceres
Next to Nature		Ceres
Nikola Corporation		Ceres
Northwest Coalition for Responsible Investment		Ceres
NW Energy Coalition	Annabel Drayton	BlueGreen Alliance
NW Energy Coalition	Annabel Drayton	Joint Comments
Proterra		Ceres
Province of St. Joseph of the Capuchin Order		Ceres
Rivermoor Energy		Ceres
Saunders Hotel Group		Ceres
Schneider Electric		Ceres
SEIU Local 6	Zenia Javalera	BlueGreen Alliance
SEIU Local 925	Erin Haick	BlueGreen Alliance
Sierra Club - Washington State Chapter	Jesse Piedfort	BlueGreen Alliance
Sierra Club Washington State	Jesse Piedfort	Joint Comments
Sierra Nevada Brewing Co.		Ceres
Sigma Consultants, Inc.		Ceres
Studio G Architects		Ceres

Affiliation	Commenter name	Comment submitted by
Tacoma Urban League	T'wina Nobles	Joint Comments
Ten Directions Design		Ceres
The Episcopal Church (Domestic & Foreign Missionary Society)		Ceres
The Green Engineer, Inc.		Ceres
The Nature Conservancy	David Mendoza	BlueGreen Alliance
Trillium Asset Management		Ceres
TripZero		Ceres
UMC, Inc.		Ceres
Unilever		Ceres
Union of Concerned Scientists	Jason Barbose	BlueGreen Alliance
Union of Concerned Scientists	Akash Singh	Joint Comments
Urban League of Metropolitan Seattle	Michelle Merriweather	Joint Comments
Vert Asset Management		Ceres
Washington Build-Back Black Alliance	Paula Sardinias	Joint Comments
Washington Conservation Voters	Rebecca Ponzio	BlueGreen Alliance
Washington Environmental Council	Rebecca Ponzio	BlueGreen Alliance
Washington Physicians for Social Responsibility	Mark R. Vossler, MD	BlueGreen Alliance
Washington Physicians for Social Responsibility	Mark R. Vossler, MD	Joint Comments
Washington State Labor Council, AFL-CIO	Larry Brown	BlueGreen Alliance
Worthen Industries		Ceres
WR Consulting, Inc.		Ceres

## Comments and Responses

We organized comments and responses by grouping them together by topics. Under each topic heading, you can see a summary of comments Ecology received for that topic followed by Ecology's response to comments on that topic.

### Legal Issues

Several comments referenced legal requirements and issues. These comments addressed issues related to Ecology's authority under the federal Clean Air Act.

#### Comments on Adequate/inadequate legal authority

**Commenters:** Natural Resources Defense Council (Comment O-13-2), Truck and Engine Manufacturers Association (Comment O-1-2, Comment O-17-6)

**Summary:** The Natural Resources Defense Council states that Ecology has the authority to adopt the California vehicle emission standards. The Truck and Engine Manufacturers Association questions Washington's authority to adopt California's vehicle emission standards

because, according to the commenter, Section 177 of the Clean Air Act only applies in states with a current ozone nonattainment area.

### **Response to Adequate/inadequate legal authority**

As recognized by EPA, states that have either nonattainment plans or maintenance plans may use Section 177 of the Clean Air Act to adopt motor vehicle emission control standards of California. 86 FR 46169, 46170 (August 18, 2021). Section 177 of the Clean Air Act, 42 U.S.C. Section 7507, authorizes adoption of California’s standards for motor vehicle emissions controls for "any State which has plan provisions approved under this part." The reference to "this part" in 42 U.S.C. Section 7507 refers to “Part D – Plan Requirements for Nonattainment Areas” of Title I of the Clean Air Act. Part D includes Clean Air Act Sections 171-193. Plans approved under Part D include both nonattainment plans approved under Section 171 and maintenance plans approved under Section 175A.

Washington has maintenance plans issued under Part D so Washington qualifies under Clean Air Act Section 177 to adopt California’s standards for motor vehicle emissions controls. See 86 FR 46169, 46170-71 (August 18, 2021) (describing Washington's nonattainment status and maintenance plans for ozone and particles).

### **Comments on Advanced Clean Trucks is a greenhouse gas standard**

**Commenter:** Truck and Engine Manufacturers Association (Comment O-17-7)

**Summary:** The Truck and Engine Manufacturers Association asserts Washington is not authorized to opt-in to the Advanced Clean Trucks under Section 177 of the Clean Air Act because California’s rule is “principally aimed at reducing greenhouse gases.”

### **Response to Advanced Clean Trucks is a greenhouse gas standard**

The commenter references an interpretive position taken by EPA in the Safer Affordable Fuel-Efficient Vehicles Rule Part One rule from 2019. 84 FR 51310 (September 27, 2019). EPA is currently reconsidering that rule due to significant concerns over its validity. 86 FR 22421 (April 28, 2021). Moreover, Advanced Clean Trucks is a motor vehicle emission control standard that reduces criteria pollution as well as greenhouse gas emissions so we do not accept that this rule is a greenhouse gas emission standard. A recent report estimated Washington’s annual emissions reductions in 2040 from adoption of the Advanced Clean Trucks Program:<sup>4</sup>

- 1,300 tons per year of nitrogen oxides;
- 14 tons per year of particulate matter; and

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<sup>4</sup> Fact sheet. Benefits of adopting California medium- and heavy-duty vehicle regulations. November 2021. Available at: <https://theicct.org/publications/state-level-hdv-emissions-reg-FS-oct21>

- 650,000 metric tons of well-to-wheel carbon dioxide equivalent emissions.

## Comments on Clarify advance notice requirement (model year)

**Commenter:** Truck and Engine Manufacturers Association (Comment O-1-3, Comment O-17-2, Comment O-19-4)

**Summary:** The Truck and Engine Manufacturers Association comments that Washington can wait until the end of 2022 to adopt the Advanced Clean Trucks because California defines model year and calendar year as the same thing. This new date would still allow Washington to meet the goal of rule implementation in model year 2025.

## Response to Clarify advance notice requirement (model year)

We disagree that we should delay adoption. The Clean Air Act requires a state to provide the two years advance notice before the start of a model year, which could be as early as January 1, 2022.

- Section 177 of the Clean Air Act requires a state to adopt the motor vehicle emission standards “at least two years before *commencement* [emphasis added] of such model year (as determined by regulations of the Administrator [EPA]).” 42 U.S.C. 7507 (2)
- In 40 C.F.R. 85.2302, EPA defines model year to be the manufacturer’s annual production period, which includes January 1.

As stated in our rule proposal notice (CR-102 form), we intend to start this program with model year 2025 vehicles. Model year 2025 could potentially start as early as January 1, 2024 so we will adopt Chapter 173-423 WAC in 2021 to ensure that we provide the required two years advance notice.

## Rulemaking Process

### Comments on Type of rulemaking process

**Commenters:** Natural Resources Defense Council (O-9-2), Northwest Pulp and Paper Association (Comment O-7-2)

**Summary:** Northwest Pulp and Paper Association objects to what it calls Ecology's use of emergency rulemaking to adopt rules containing a misleading and incorrect initial description of Chapter 173-400 WAC on the rulemaking website. The Natural Resources Defense Council asserts Ecology has clear legal authority to adopt and amend the Clean Vehicles Program using the CR-102 process.

### Response to Type of rulemaking process

Ecology is not using an emergency rulemaking process to propose and adopt these rules. Most rulemaking actions start at the rule announcement phase, however, this rulemaking met the requirements in RCW 34.05.310 (4) to start at the rule proposal phase. We complied with RCW 34.05.320 by filing the Proposed Rulemaking Notice (CR-102 form)

and emailing the required notice within the specified time-period. We have used this process in other rulemaking actions to update the adoption dates of federal rules.

The initial description on the rulemaking web page could be misleading. We assumed the summarized information was sufficient. To reduce confusion in the future, we will ensure the introduction on the rulemaking website provides the full title of each rule and a summary of each rule when a rulemaking action includes several rules.

For associated comments on adopting federal rules as written, refer to the topic “WAC 173-400-025 Adoption by reference date.”

## **Comments on Costs and benefits**

**Commenters:** BlueGreen Alliance (Comment O-2-6, Comment O-6-3), Ceres (Comment O-6-2), Climate Solutions (Comment O-12-3), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-9, Comment O-8-10), Joint Comments (Comment OTH-1-5, Comment OTH-1-6), Matt Stevenson Consulting (Comment B-1-3, Comment B-1-4), Natural Resources Defense Council (Comment O-16-1, Comment O-9-3, Comment O-9-4), Nikola Corp. (Comment B-3-3, Comment B-3-5), NW Energy Coalition (Comment O-10-3), Puget Sound Clean Air Agency (Comment A-2-2, Comment A-2-3, Comment A-3-2, Comment A-3-3, Comment A-3-4), Sharon Burke (Comment I-3-2), Sierra Club (Comment O-15-3, Comment O-15-6), Tesla (Comment B-4-5, Comment B-4-6, Comment B-4-7), The Northwest Seaport Alliance (Comment A-1-2, Comment A-1-3), Union of Concerned Scientists (Comment O-14-4), Truck and Engine Manufacturers Association (Comment O-17-8, Comment O-1-6, Comment O-17-3, Comment O-19-2)

**Summary:** We received many comments on the various costs and benefits of implementing the ZEV rule and Advanced Clean Trucks in Washington.

Costs include:

- Higher initial vehicle cost, especially for heavy-duty vehicles
- Building the charging infrastructure
- Few types and models of zero emission heavy-duty vehicles
- Lack of incentives to offset the cost of purchasing a heavy-duty truck or installing charging infrastructure

Benefits include:

- Improved air quality, especially in overburdened communities living near transportation corridors
- Lower emissions of greenhouse gases that cause climate change
- Improved availability of ZEV
- Expanded access to charging stations

- Lower vehicle costs over time
- Stability to plan for future electricity needs
- More jobs in Washington

Some comments assert the rule is economically feasible, while others assert California’s rules are cost prohibitive and Ecology must evaluate costs and benefits.

## Response to Costs and benefits

The Administrative Procedures Act in RCW 34.05.328 (5)(b) and the Regulatory Fairness Act in RCW 19.85.025 (3) exempt this rulemaking action from preparing any economic analyses. These statutes exempt a rule from a cost-benefit analysis when the rule is dictated by statute, incorporates federal rules by reference, or corrects or clarifies language without changing its effect.

California’s evaluation of the Advanced Clean Trucks rule found the benefits outweigh the costs in an analysis of the emission benefits, climate benefits, health benefits, and economic costs and benefits.<sup>5</sup> California expects the rule to result in a total savings of \$5.9 billion, with health benefits estimated to be an additional \$8.9 billion in savings.<sup>6</sup>

## Credits

### Comments on Proportional credits

**Commenters:** Alliance for Automotive Innovation (Comment O-5-3), Tesla (Comment B-4-4)

**Summary:** Tesla supports Ecology's decision to exclude proportional credit banking since Washington is ahead of compliance without a ZEV mandate in place. Proportional credit banking provides automakers an incentive to deliver vehicles into California rather than into Washington. Proportional credit generation allows automakers to double count vehicles delivered in California as if they were delivered in a Section 177 state that includes this provision its state rule. Consequently, it is likely that automakers will deliver vehicles in California since those vehicles count towards compliance in multiple states.

The Alliance for Automotive Innovation recommends that Ecology consider establishing a proportional credit bank but prohibit the use of these credits until Ecology updates this rule to include California Advanced Clean Cars II. They claim this change would not be a substantial difference from the proposed rule since establishing a credit bank that cannot be used would have neither an environmental nor an economic impact on the regulations.

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<sup>5</sup> California Air Resources Board. Attachment C. Updated Costs and Benefits Analysis for the Proposed Advanced Clean Trucks Regulation. Accessible:

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/act2019/30dayattc.pdf>.

<sup>6</sup> California Air Resources Board. Updated Information Digest. Economic Impacts. Page 7. Accessible:

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/act2019/uid.pdf>.



## Response to Proportional credits

In a proportional credit system, Washington would provide a starting balance for each automaker proportional to its California ZEV credit bank. We agree with Tesla that we do not need to offer proportional credits to assist manufacturers to meet the ZEV sales requirement. Washington is a leading state for ZEV sales without the mandate. See also the response to “Use of early action credits in ZEV.”

Adding proportional credits with a future effective date would be a substantial difference to the proposed rule under RCW 34.05.340 (2), since the effects of the adopted rule would substantially differ from the effects of the proposed rule. Therefore, it is outside the scope of changes we can make at this point without delaying the rulemaking process.

Further, we would be required to prepare an economic analysis and a small business impact statement if we added proportional credits since the exemptions in RCW 34.05.328 (5)(b)(iii) and RCW 19.85.025 (3) would not apply. To comply with these requirements, we would need to re-propose the rule. We did not change our rule because of these comments.

## Comments on Use of credits in Advanced Clean Cars II

**Commenters:** Alliance for Automotive Innovation (Comment O-5-4), Joint Comments (Comment OTH-1-3), Natural Resources Defense Council (Comment O-13-3, Comment O-9-5)

**Summary:** The Alliance for Automotive Innovation requests that early credits and proportional credits be included in future rule updates that incorporate the Advanced Clean Cars II rule. Joint Comments and the Natural Resources Defense Council support adoption of Advanced Clean Cars II that has a Washington credit system with the same credit stringency as California’s rule. Natural Resources Defense Council also requests that Ecology provide greater specificity of our intent in a statement for the record.

## Response to Use of credits in Advanced Clean Cars II

As California works to implement its stated goal of increasing the ZEV sales requirement to 100 percent (also known as “Advanced Clean Cars II”), the state Air Resources Board is evaluating a compliance system that could rely on banked credits to smooth the transition to the new requirements. Many auto manufacturers were able to bank significant numbers of credits during the early years of California’s ZEV program, when looser standards allowed a wider variety of vehicles to earn credits. Using these credits during the transition to a 100-percent ZEV requirement would give manufacturers greater flexibility to adjust their factory, sales and service needs, and minimize disruptions for consumers.

Washington’s ZEV rules will become effective starting with the 2025 model year. Manufacturers delivering vehicles to Washington will not have the ability to generate or bank credits before our program begins. We acknowledge this could leave manufacturers without banked credits available to smooth their transition to Advance Clean Cars II when that is adopted in Washington. Because these standards are still in development,

however, Ecology will need to evaluate potential pathways for assisting automakers' compliance with more stringent ZEV sales requirements as part of a future rulemaking to adopt the Advanced Clean Cars II rule.

## **Comments on Use of early action credits in Advanced Clean Trucks**

**Commenters:** Joint Comments (Comment OTH-1-10), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-8)

**Summary:** Comments request that we change the early action credit generation in Advanced Clean Trucks Section 1963.2 from four years to one, either in this rulemaking or in a future rulemaking. Commenters were concerned that allowing for four years of early credit generation may reduce the stringency of the rule.

### **Response to Use of early action credits in Advanced Clean Trucks**

RCW 70A.30.010 directs Ecology to adopt California's motor vehicle emission standards as written and to maintain consistency with California's rules.

California's rule offers early action credits for manufacturers of medium- and heavy-duty trucks to accelerate the availability of zero-emission vehicles in this sector. The rule includes constraints on the use of credits that provide flexibility for manufacturers while maintaining the stringency of the rule:

- Credits for vehicles sold in model year 2021, 2022, and 2023 expire in 2030 model year.
- Credits for 2024 model year and later sales have a 5-year life.

## **Comments on Use of early action credits in ZEV**

**Commenters:** Alliance for Automotive Innovation (Comment O-5-2), Joint Comments (Comment OTH-1-2), Tesla (Comment B-4-3), Rivian Automotive (Comment B-2-3), Zero Emission Transportation Association (Comment O-4-2)

**Summary:** Alliance for Automotive Innovation, Tesla, Rivian Automotive, and Zero Emission Transportation Association support the inclusion of early action credits in the ZEV rule to accelerate ZEV availability. Without these credits, a manufacturer is likely to prioritize vehicle model delivery to states where the ZEV will count towards compliance, leaving Washington with fewer ZEV deliveries in 2022 and 2023. Tesla said adding credits would be a non-substantive change. Joint Comments supports the exclusion of these credits given Washington's current ZEV sales.

### **Response to Use of early action credits in ZEV**

Early action credits are a mechanism to incentivize automakers to introduce electric vehicles into a market before the rule takes effect, thereby reducing their future compliance obligations under the ZEV standard.

Washington is already a leading state for ZEV sales. In fact, the number of plug-in hybrid and fully electric vehicles sold in Washington exceeds the California standard for 2021. Because of this, allowing automakers early action credits for sales between 2022 and 2024 would reduce the future benefits for the state in lowering emissions and advancing zero-emission vehicles, without a commensurate benefit to consumers today.

Moreover, adding an early action credit provision would be a substantial change to the proposed rule since the proposed rule stated credits would not be available for new vehicles sold in Washington before model year 2025. We did not change our rule because of these comments.

## General topics

### Comments on Advanced Clean Trucks

**Commenters:** BlueGreen Alliance (Comment O-2-2), Ceres (Comment O-11-2), Climate Solutions (Comment O-12-2), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-2), Joint Comments (Comment OTH-1-4), Matt Stevenson Consulting (Comment B-1-1), Natural Resources Defense Council (Comment O-13-4), Northwest Energy Coalition (Comment O-10-2), Rivian Automotive, LLC (Comment Rivian Automotive, LLC (Comment B-2-2), Sharon Burke (I-3-1), Sierra Club (Comment O-15-2), Tesla (Comment B-4-2), Truck & Engine Manufacturers Association (Comment O-1-1, O-17-1, O-19-1), Union of Concerned Scientists (Comment O-14-2), Zero Emission Transportation Association (Comment O-4-1)

**Summary:** Many commenters supported the adoption of the Advanced Clean Trucks. One commenter opposed the adoption of this rule, and recommended that Ecology wait until California has adopted the next version of this rule and adopt EPA's yet-to-be-proposed national program.

### Response to Advanced Clean Trucks

Ecology must comply with RCW 70A.30.010 that directs us to adopt rules to implement California's vehicle emission standards. Our goal is to adopt California's vehicle emissions standards as expeditiously as possible.

### Comments on General comments on proposal

**Commenters:** Alliance for Automotive Innovation (Comment O-5-5), Bill McClain (Comment I-2-1), BlueGreen Alliance (Comment O-2-1), Ceres (Comment O-11-1, O-6-1), Climate Solutions (Comment O-12-1), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-1), Joint Comments (Comment OTH-1-1), Natural Resources Defense Council (Comment O-13-1, O-9-1, O-16-2), Nikola Corp. (Comment B-3-1), Northwest Energy Coalition (Comment O-10-1), Puget Sound Clean Air Agency (Comment A-2-1, A-3-1), Rivian Automotive, LLC (Comment B-2-1), Sierra Club (Comment O-15-1), Tesla (Comment (B-4-1), The Northwest Seaport Alliance (Comment A-1-1), Union of Concerned Scientists (Comment O-14-1)

**Summary:** Many commenters supported our proposal. As Bill McClain stated, "I write to express my strong support for the proposed rule changes, to increase sales of zero-emission vehicles and decrease the toxic pollution we all breathe every day."

## **Response to General comments on proposal**

Thank you for your comments. Transportation is a major source of air pollution. This rulemaking will reduce emissions of volatile organic compounds, nitrogen oxides, particles, and multiple air toxics.

## **Comments on Low NOx Omnibus Rule**

**Commenters:** BlueGreen Alliance (Comment O-2-4), Climate Solutions (Comment O-12-4), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-7), Joint Comments (Comment OTH-1-13), Natural Resources Defense Council (Comment O-13-6), Puget Sound Clean Air Agency, (Comment A-2-4), Sierra Club (Comment O-15-5), Truck & Engine Manufacturers Association (Comment O-17-4, Comment O-1-4)

**Summary:** Most commenters supported Ecology's adoption of California's Heavy-Duty Low NOx Omnibus Rule as soon as California finalizes it. One commenter suggested that this rule is cost-prohibitive and infeasible so it should not be a component of Washington's ZEV strategy.

## **Response to Low NOx Omnibus Rule**

California's rule will update vehicle emission standards and other emission-related requirements for new heavy-duty engines and vehicles (including long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles). Consistent with RCW 70A.30.010, Ecology intends to adopt California's Heavy-Duty Omnibus Regulation as soon as possible after the rule is final.

## **Comments on Require fleet reporting/regulate existing fleets**

**Commenters:** BlueGreen Alliance (Comment O-2-3), Climate Solutions (Comment O-12-5), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-5, Comment O-8-6), Joint Comments (Comment OTH-1-11, Comment OTH-1-14), Matt Stevenson Consulting (Comment B-1-2), Natural Resources Defense Council (Comment O-16-4, O-13-5), Nikola Corp. (Comment B-3-4), Northwest Energy Coalition (Comment O-10-4), Sierra Club (Comment O-15-4), Union of Concerned Scientists (Comment O-14-3)

**Summary:** Commenters advised Ecology to adopt emission standards on existing vehicles, including heavy-duty trucks, drayage trucks, ocean-going vessels, and the upcoming Advanced Clean Fleets rule. Commenters urged Ecology to start a separate rulemaking to adopt a one-time fleet reporting requirement in the Advanced Clean Trucks rule that requires large entities (fleet owners, businesses, government agencies, municipalities, brokers, etc.) to report information about their vehicles over 8,500 lbs. This reporting will allow Washington to obtain baseline information on the existing truck fleets. A commenter said that purchasers of large fleets should also have requirements to purchase electric trucks. A commenter urged Ecology to regulate existing fleets to help meet our obligation under the Environmental Justice or HEAL Act.

## **Response to Require fleet reporting/regulate existing fleets**

The rule proposal did not include the fleet reporting requirements in the Advanced Clean Trucks rule because they are not emission control standards for new motor vehicles. The

goal of this rulemaking is to adopt California’s vehicle emission standards for new vehicles as authorized under Section 177 of the Clean Air Act. RCW 70A.30.010 does not direct Ecology to require fleet reporting or to regulate existing vehicles.

## **Comments on WAC 173-400-025 Adoption by reference date**

**Commenters:** Alan Newman (Comment I-1-1), Northwest Pulp and Paper Association (Comment O-7-1), Western States Petroleum Association (Comment O-3-2)

**Summary:** Newman suggests setting the adoption date for 40 CFR 52.21(a) to January 24, 2018, to simplify the action and not adopt EPA’s changes to project netting. Northwest Pulp and Paper supports the adoption of federal rules as promulgated in 85 FR 74890 (November 24, 2020), and notes this proposal does not adopt federal rules as written. Western States Petroleum Association requests that Ecology consider aligning these rules with EPA’s rules to remain consistent and streamline the permitting process.

## **Response to WAC 173-400-025 Adoption by reference date**

We agree the proposed rule language was confusing. We changed the adoption date to December 23, 2020, for several reasons. The new date:

- Updates the January 24, 2018 date in the rule;
- Complies with RCW 34.05.328 (5)(b)(iii) and RCW 19.85.025 (3); and
- Reflects the last date that our current requirements for project emissions accounting for large industrial sources in Washington were in effect under the federal rules. The rule changes from 85 FR 74890 (November 24, 2020) went into effect on December 24, 2020, and are not adopted by reference.

We also deleted two proposed subsections:

- Subsection (3) since there are no exceptions to adopting federal rules by reference with the new date; and
- Subsection (4) since the new requirements for existing municipal waste landfills were not in effect in 2020.

We are concerned that the 2020 changes to EPA’s rules for project emissions accounting could allow a major source to circumvent important permitting requirements. These 2020 rule changes may be amended by EPA, or invalidated by a federal court in the near term due to the significant legal and policy concerns at issue. Washington, along with other states, joined litigation against EPA over the 2020 changes to project emissions accounting. On October 12, 2021, EPA announced that it plans to start a rulemaking action to review and potentially revise the “Project Emissions Accounting” rule as well as

its 2018 Project Emissions Accounting memorandum.<sup>7</sup> Given these circumstances, we decline to change the approach to project emissions accounting in Washington until EPA rulemaking or the litigation resolves this issue.

For associated comments on the rulemaking process, refer to the topic “Type of rulemaking process.”

## **Comments on WAC 173-423-070 (2) LEV credit pooling**

**Commenter:** Alliance for Automotive Innovation (Comment O-5-1)

**Summary:** WAC 173-423-070 (2) requires compliance to be based on the number of vehicles delivered for sale in Washington. This conflicts with WAC 173-423-030 that adopts 13 California Code of Regulations 1961.2 and 1961.3 (a)(5)(D) that allow pooling across Section 177 states. We assume WAC 173-423-070 Low emission vehicles allows pooling using Option 2 in 13 CCR 1961.2 and reporting all sales to CARB, with a copy to Ecology.

## **Response to WAC 173-423-070 (2) LEV credit pooling**

Thank you for bringing this to our attention. Ecology intends to allow automakers to comply with the emission reporting requirements in 13 CCR 1961.2 and 1961.3 using either compliance option. To maintain consistency with California’s rules, as directed by RCW 70A.30.010, we removed the last sentence in WAC 173-423-070 (2)(b) and deleted WAC 173-423-070 (3)(c) because both provisions restricted compliance to sales in Washington and do not allow pooling with California and Section 177 states.

## **Comments on WAC 173-423-075 ZEV credits**

**Commenters:** Joint Comments (Comment OTH-1-7), Natural Resources Defense Council (Comment O-9-6)

**Summary:** Subsection (1) (c) as written allows new ZEV from model years before 2025 that are delivered for sale in Washington starting in model year 2025 to count towards meeting the annual credit percentage requirement. Comments recommend the following change to align the rule language with the stated intent in the CR-102 form:

WAC 173-423-075 (1) (c) ZEV credits. ~~New vehicles delivered for sale in Washington before model year 2025 cannot earn ZEV credits.~~ ZEV credits may only be earned by model year 2025 and subsequent vehicles.

## **Response to WAC 173-423-075 ZEV credits**

Ecology agrees that the proposed language could be misinterpreted to allow ZEV credit generation for a new vehicle from model years before 2025. To clarify our intent, we

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<sup>7</sup> US EPA. Denial of Petition for Reconsideration and Administrative Stay: “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting.” 86 FR 57585 (October 18, 2021). Accessible: <https://www.federalregister.gov/documents/2021/10/18/2021-22611/denial-of-petition-for-reconsideration-and-administrative-stay-prevention-of-significant>

have changed the rule language at WAC 173-423-075 (1)(c) as suggested: “ZEV credits may only be earned by model year 2025 and subsequent vehicles.”

## **Comments on WAC 173-423-140 Enforcement penalties**

**Commenters:** Joint Comments (Comment OTH-1-9), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-3)

**Summary:** Commenters recommend that Ecology update the rule to include the correct penalties for Advanced Clean Trucks. The proposal identifies a penalty ceiling of \$5,000 per vehicle which is correct for the ZEV program but not for the Advanced Clean Trucks.

## **Response to WAC 173-423-140 Enforcement penalties**

The proposed rule contains the existing penalties for low emission vehicles. The proposal mistakenly did not update the enforcement section to align with the penalty requirements in the ZEV and Advanced Clean Trucks rules. To address this mistake and simplify implementation of these rules, we deleted this provision to ensure the civil penalty provisions in California Code of Regulations, Title 13, 1961(c)(3)(A), 1962.2(g)(8), and 1963.5(a)(4) apply.

## **Comments on WAC 173-423-150 Severability clause**

**Commenters:** Joint Comments (Comment OTH-1-8), Earthjustice/Duwamish River Cleanup Coalition (Comment O-8-4), Natural Resource Defense Council (Comment O-9-7)

**Summary:** Commenters suggest revising the rule structure that locates the ZEV rule and Advanced Clean Trucks rule in the same section. This structure creates some uncertainty because the entire section would be voided if either rule were found to be invalid.

## **Response to WAC 173-423-150 Severability clause**

WAC 173-423-150 Severability indicates Ecology’s intent that the rest of the rule should stand even if a section is held invalid. To make clear that this does not suggest that invalidation of a portion of a section necessitates invalidation of the entire section, Ecology agrees it would be good to clarify this language. We changed “section” to “portion” in the adopted rule:

“Each ~~section~~portion of this regulation (~~(shall be deemed)~~) is intended to be severable, and in the event that any ~~section~~portion of this regulation is held invalid, the remainder (~~(shall)~~) is intended to continue in full force and effect.”