

August 31, 2022

Ms. Rachel Assink
Rulemaking Lead
Washington State Department of Ecology
300 Desmond Drive SE Lacey, WA 98503

RE: Clean Fuels Program Rulemaking – CR-102 Rule Proposal Phase

Dear Ms. Assink,

The coalition of utilities joining these comments (Joint Signatories, or “we”) hereby submit these comments to the Department of Ecology for the CR-102 phase of the Clean Fuel Program (CFP) rulemaking, Chapter 173-424 WAC. We appreciate the opportunity to submit these comments and we recognize the substantial work, collaboration, and engagement Ecology staff have done over this rulemaking. As generators, distributors, and dispensers of electricity, one of the cleanest eligible fuels in the CFP, electric utilities are essential to both the function of the CFP and achieving the overall state goals of reducing greenhouse gas and other air pollution from the transportation sector.

The Joint Signatories serve nearly all Washingtonians with some of the nation’s cleanest electricity, currently fuel over 100,000 electric and battery electric vehicles (EV), and provide customer-centric programs that enhance customer value and relationships to their electricity, reduce costs, increase reliability, and support customers’ transitions to a more dynamic and clean grid of the future. Washington utilities’ continued and increasing investment in clean energy will contribute to reduced emissions in the transportation sector.

We are committed to a robust CFP that reduces greenhouse gas (GHG) emissions, provides investments in underserved communities, and encourages the expansion of transportation electrification (TE). The Joint Signatories are committed to the utility expenditure requirements in the law, which will result in accelerated transportation decarbonization, equitable outcomes in mobility services and environmental quality, and beneficial market transformation and workforce development; all for benefit of the people of Washington state.¹ As the CFP enters the implementation stage, we look forward to continued participation in the rulemaking process to ensure that the program works effectively across the state.

¹ See RCW 70a.535.080

Foundational Principles

The Joint Signatories are unified in our vision for the CFP. We believe a successful implementation of the CFP will:

- enable and encourage active utility involvement in the CFP;
- support TE in Washington State;
- direct the flow of CFP benefits to residents of Washington State;
- enhance electric grid operations; and
- support state climate goals.

To this end, the Joint Signatories have developed a set of guiding principles to aid in building consensus on proposed solutions to issues in Ecology's draft rules as well as upcoming CFP implementation and iteration.

1. **Maximize benefits to Washington residents:** CFP credits must be awarded and used in ways that comply with state law and result in the highest and best outcomes for the welfare and well-being of the residents of Washington.
2. **Expenditures support outcomes:** CFP revenue must be spent in accordance with both LCFS statute and broader statewide emission and e-mobility requirements, objectives, and goals.
 - *Equity:* Credit revenue expenditures must ensure equitable and just beneficial outcomes for overburdened communities.
 - *Local benefits and community partnerships:* Credit revenue must be spent in Washington State and shaped by the public who stand to benefit the most as required by RCW 70A.02.
 - *Transparency:* CFP credit generating entities must be able to demonstrate that benefits flow to the intended recipients.
 - *Accelerate the transition:* Credit expenditures must supplement EV transition efforts; it may not replace or substitute existing expenditures.
3. **Simple and predictable:** CFP operations, compliance and reporting should be simple, understandable and consistent in order to maximize participation.

Supported rule elements

Electric utilities play a critical role in Washington state's transition to a decarbonized, affordable, equitable, and reliable transportation future. The CFP further emphasizes this role, particularly in regard to accelerating that transition and ensuring that benefits flow to Washington's overburdened communities. The Joint Signatories highlight below major elements of the draft

CFP rules that contribute to and recognize the role electric utilities have in advancing and supporting the clean transportation transition.

1. First recipient of residential base and incremental electric charging credits
2. Second recipient of many categories of nonresidential electric charging credits.
3. Ecology's proposed methodology for allocating residential, nonmetered electric vehicle charging credits.
4. The opportunity to submit an alternative methodology for calculating residential, nonmetered electric vehicle charging credits.
5. The opportunity to serve both as a credit generator and a credit aggregator.
6. Electric utilities are not "regulated parties" and rather are opt-in credit generators.
7. Ecology included ocean going vessels, ground support equipment, and other non-road electric transportation.

Priority issues

The Joint Signatories have identified six issues as priority concerns which could create significant challenges to launching a successful CFP. Those issues are:

- Multifamily dwellings and nonresidential EV charging
- Nonmetered residential EV charging estimation methodology including quarterly reporting
- Nonresidential credit generation requirements
- "Service provider" language
- Guidance documents
- Non-utility investment provisions

Multifamily dwellings and nonresidential EV charging

Concern: Joint Signatories find the current definitions in rules that address types of residences are problematic.² Ecology's draft rules offer a misaligned definition of "multifamily housing."³ Elsewhere in the rules, EV charging at multifamily housing is grouped together with EV charging for fleets and at workplaces to comprise a category termed nonresidential charging.⁴ This categorization of multifamily housing as a type of building stock does not align with

² Joint Signatories are not in agreement on the draft rules' classification of some multifamily housing as nonresidential and the subsequent recipient of credits, but agree to monitor program outcomes to determine a recommended path forward that achieves optimal benefits for the associated residents.

³ Multifamily housing is defined as "a structure or facility established primarily to provide housing that provides four or more living units in which each unit shares a floor or ceiling on at least one side." (draft WAC 173-424-110(97))

⁴ Draft WAC 173-424-220(3): "**Nonresidential electric vehicle charging.** For electricity used to charge an electric vehicle at nonresidential locations, such as in public for a fleet, at a workplace, or at multifamily housing sites...[italicized emphasis added]"

statutory language, creates unnecessary ambiguity and complicates utilities' TE program design. The definition also makes no reference to parking availability and management practices, which is a critical factor in modeling EV charging usage and in selecting appropriate EV service equipment (EVSE) tailored to fit a building's unique function and layout.

Relatedly, the draft rules include a definition for "single family residence," but aside from that definition, the term is not used in the rules. As a result, the rules have inconsistent language regarding and subsequent regulatory treatment of residential structure classifications that are confusing and problematic due to the important and challenging nature of supporting TE at multifamily housing.

Proposed solution: The broader term "residence" is used frequently in the rules but is not defined. We recommend removing the definition of "single family residence" and including a definition for "residence" as "an attached or detached housing unit including but not limited to townhomes, duplexes, triplexes and fourplexes. This term captures housing stock that is not classified by the 'multifamily housing' term for this chapter." Adding this definition will clarify that uses of the term "residence" are intended to include all residences, whether those residences exist as single-family or certain multifamily building stock, and provide a clear dividing line between "residence" and certain types of "multifamily housing."

The Joint Signatories also recommend revising the definition for "multifamily housing" to be "a structure or facility established primarily to provide housing that provides five or more living units in which each unit shares a floor or ceiling on at least one side, and that does not provide parking reserved exclusively for residents such that individual parking spaces are assigned to, deeded to, owned by or otherwise reserved for exclusive use of the owner or resident of a specific residence." We are proposing this alternative definition for three reasons.

First, we believe consistency across jurisdictions will allow Washington CFP electric utilities; multifamily dwelling owners, residents and affiliated stakeholders; community members; and EVSE companies to learn from EVSE deployment in other jurisdictions. Because multifamily housing has unique characteristics compared to other EV charging locations, consistency in the definitions used by various jurisdictions will streamline CFP-funded program offerings to multifamily housing locations. This in turn will result in more credit generation and reinvestment for TE efforts at multifamily housing, which tend to be some of the more difficult settings to receive investment.

Second, this definition more accurately describes the types of building stock and types of vehicle parking arrangements that combine to create on-site EV charging patterns and EVSE requirements which meaningfully diverge from common residential EV charging patterns. The proposed definitional changes for both "residence" and "multifamily housing" will result in

transparent and consistent treatment of these building stocks when it comes to deploying EVSE and supportive TE investments that reflect the associated EV use cases and charging patterns.

Finally, these proposed definitional changes reflect ongoing and planned electric utility programs and projects to install charging infrastructure in multifamily housing. Particularly in more urbanized utility service areas, residential building stock is diverse, ranging from single family homes, townhomes, fourplexes and smaller condominium units to large multifamily housing complexes and mid-rise mixed-use buildings with or without dedicated parking for residents. Utility programs must reflect this diverse housing stock environment; must cater to the unique needs of the residents, landlords, and property managers; and must overcome barriers that overburdened customers of certain housing stock face. By aligning the rule definitions with not only our body of TE work, but also other types of customer programs like solar or energy efficiency, Ecology would improve CFP and utilities' ability to integrate CFP efforts into other customer-focused programs, to the mutual benefit of utilities and their customers.

Nonmetered residential EV charging estimation methodology including quarterly reporting

Concern: The draft rules describe three different datasets and approaches which could be used by Ecology in calculating nonmetered residential EV credits. One dataset would be created through a quarterly reporting requirement, while the other two are described and more clearly connected to the nonmetered EV charging estimate.

- Draft WAC 173-424-420(3) describes reporting parameters for electricity used as a transportation fuel. In subsection (b)(i), the rule language establishes that utilities “must provide to ecology the daily average EV electricity use data for the calculation of credits for nonmetered charging[...].”
- Draft WAC 173-424-540(3)(b) states that “ecology will calculate the total electricity dispensed as a transportation fuel based on analysis of the total number of BEVs and PHEVs in a utility’s service territory based on Washington state department of licensing records.” The draft rule then describes two approaches and data sources Ecology may use as the basis of its estimate for nonmetered residential EV charging.
- Draft WAC 173-424-540(3)(d) allows credit generators to submit an alternative methodology for Ecology’s consideration.

The reporting requirement in Draft WAC 173-424-420(3)(b)(i) presents substantial work, risk, and liability to electric utilities. The rule language references the “method established in [draft] WAC 173-424-540,” but section -540 does not allude to or make use of any utility-reported data collected in section -420. Ecology does not provide a methodology, guidance, or parameters for how the “daily average EV electricity use data” should be calculated. It is unclear why Ecology needs data from utilities regarding nonmetered EV charging, and whether utilities have any data on unmetered charging available to share. Relatedly, the timing of the quarterly reporting

requirement does not align with the unmetered residential charging estimate, which happens “at least twice a year.”

Finally, we believe that current practices and experience from California’s and Oregon’s respective low carbon fuel standard programs justify why Ecology should rely on the methodology in –540 and not rely on utility-submitted data. Reducing barriers to credit generator participation, minimizing risk and extractive practices of LCFS participants, and enhancing data security and program efficiency by having the regulator calculate the nonmetered base residential credits are demonstrated benefits by California and Oregon programs. Furthermore, by reducing requirements of electric utilities while achieving identical, beneficial program outcomes, Ecology can support the utility participation principle listed above.

Proposed solution: The Joint Signatories propose deleting the portion of 420 (3)(b)(i) starting at “within” and ending “quarter,” thus simply removing the quarterly reporting requirement. This revision only enhances the nonmetered charging estimate methodology language in -540(3)(b). With -540(3)(d), the draft rules offer sufficient flexibility for alternative estimation methods. The Joint Signatories also commit to actively participating in any Department of Ecology effort to develop an estimation methodology.

Nonresidential credit generation – requirements for fueling supply equipment

Concern: The draft rules require nonresidential chargers to individually measure electricity dispensed in order to successfully generate credits.⁵ As the rules currently read, the measurement must occur within or at the fuel supply equipment (FSE), which in this case is exclusively the charging equipment. Unless there’s flexibility built in to this FSE equipment requirement, the strict application of this data collection and reporting would/appears to disallow lower-cost, simpler approaches to meter EV charging.

For fleets, multifamily residential buildings, and some public charging use cases, a strict application of these requirements could prove to be expensive, onerous and in some instances impossible. This restriction grows into a much bigger problem when the type of charging equipment that will be used in these nonresidential settings is considered. Many nonresidential customers are using and will continue to deploy non-networked level 2 chargers, which are often not equipped to measure dispensation of electricity. Though direct current fast chargers (DCFC) often have the internal capabilities and will likely satisfy this requirement as written, the consequences of these restrictions at the customer or site level could be inhibitory as these

⁵ Draft WAC 173-424-300(1)(b)(vii)(B) requires extensive information for each fueling supply equipment (FSE) used for “nonresidential EV charging for on-road application.” Draft WAC 173-424-300(1)(g)(iii)(C) specifies that nonresidential EV charging FSE is “equipment capable of measuring the electricity dispensed...” Draft WAC 173-424-420(3)(d) states that CFP registered parties claiming nonresidential EV charging credits must report “the amount of electricity dispensed in kilowatt hours to vehicles per FSE.”

customers deploy multiple types of charging equipment with varying software, hardware, and utility configurations. The requirements will drive significant up-front and ongoing costs and logistical challenges for utilities' TE programs.

The Joint Signatories support a robust standard for metering accuracy in nonresidential applications and believe such a standard can be achieved without the rules specifying particular metering technologies and approaches. The draft rules may not allow for alternative methods of isolating and measuring EV charging activities, such as sub-metering, meter data disaggregation, vehicle telematics and load-management hardware. These methods can greatly reduce costs for site hosts, thereby increasing EV adoption and achieving the outcomes of the CFP. For example, not every individual FSE needs to be metered. Multiple FSE can be banked behind a single electric meter that provides the same needed data at a much lower cost. These alternative methods have met and can continue to meet what Ecology is seeking regarding electricity dispensation measurements at nonresidential activities.

Proposed solutions: The Joint Signatories fully support the measuring of EV charging in certain end-uses or applications. We believe some additional language in the CFP rule will provide the guidance needed to comply with the CFP and provide reliable, accurate meter data. We propose three alternative options for Ecology depending on programmatic facilitation:

1. Adopt the following language in rules, to be inserted after the first sentence of Draft WAC 173-424-300(1)(g)(iii)(C): “For the purposes of compliance with this requirement, ‘equipment’ includes an electric utility meter, sub-metering technologies, meter disaggregation software, load-management hardware capable of disaggregating electricity use and isolating EV charging events, or other technologies that reliably and accurately measure electricity dispensed for EV charging.”
2. Insert language in rules that creates a standard for metering technology accuracy that is technology or means agnostic.
3. Ecology creates a metering technology accuracy standard and subsequent permissible technology or means list outside the rulemaking process, such as through upcoming guidance documents, that is referenced in rules.

Nonresidential credit generation – “Service provider”

Concern: Draft WAC 173-424-220(3)(b) states, “If the owner *or service provider* [emphasis added] of the electric-charging equipment does not generate the credits, then an electric utility or its designated aggregator may generate the credit, if the two entities agree by written contract that...” Later, in Draft WAC 173-424-220(11), the term “service provider” again appears in the list of entities that must elect not to generate credits before the backstop aggregator can claim credits.

The inclusion of a service provider in -220(3)(b) is inconsistent with the preceding rule language, as -220(3)(a) specifies that “the owner of the electric charging equipment may generate credits from each piece of equipment.” The inclusion of a previously unmentioned third party also creates ambiguity regarding which two entities are referred to in -220(3)(b). Further, the term “service provider” is undefined in the rules and not a term that has a commonly recognized meaning in the sector or in this context. In addition, there are many different types of service provider and thus several possible definitions that are very different. Its use in the draft rules could impair utilities’ ability to claim credits from nonresidential chargers when the owner elects not to. Finally, having only one entity as the second-in-line credit generator is consistent with the approach that Ecology has taken for the other types of electricity in draft WAC 173-424-220.

Proposed solution: The Joint Signatories support a simple solution to this issue – simply removing the phrase “or service provider” in the two instances where it is used, Draft WAC 173-424-220(3)(b) and -220(11).

Guidance Documents

Concern: Ecology’s draft rules offer a limited level of detail regarding CFP operations and program compliance nuances. Relatedly, the CFP may need to adapt and evolve in its early years. The Joint Signatories understand that, in order to provide the needed level of detail and to enable easier evolution of program implementation, Ecology staff will develop guidance documents, similar to and adapting from California’s CFP document library. These guidance documents will provide critical information to participants. Key components of electric utilities’ role in the CFP, ranging from credit estimation methodologies and reporting to expenditures, will likely be developed and implemented through these documents. These guidance documents will substantially affect planning, implementation, and compliance. The Joint Signatories are concerned that guidance documents developed without meaningful involvement from impacted parties creates risk and uncertainty.

Proposed solution: Ecology staff must ensure that stakeholders are able to participate in the development and review of any CFP program materials such as guidance documents or user guides. Joint Signatories recognize the need for balancing limited staff resources and commit to working with Ecology on a process that is mutually agreeable to ensure that documents are produced in a timely and successful manner while considering impacted parties’ concerns and needs.

Non-utility investment provisions

Concern: The CFP is designed to reduce the environmental, health and economics burdens of historical and current transportation investments and related pollution on overburdened populations in Washington. This is abundantly clear and required not only in statute, but in companion legislation and policy efforts such as the Clean Energy Transformation Act and the

HEAL Act. Specific environmental equity and justice provisions, like percentage of investments for overburdened populations, are applied to electric utilities. We support these requirements and commit to working with Ecology and interested stakeholders to ensure compliance.

However, electric utilities will account for only a portion of total CFP investments. No equity or environmental justice provisions are currently applied to the CFP non-electric utility participants who will expend revenues generated from the sales of CFP credits. Transitioning Washington's transportation systems to clean and affordable alternatives in an equitable and just manner will require maximum effort and coordination across all programs and available dollars. Placing meaningful spending requirements on electric utilities but not on other entities pursuing credits through TE both reduces these entities' involvement in zero-emissions transportation systems and restricts the available funds that can accelerate and support this transition.

Proposed solution: At a minimum, the environmental justice and equity provisions currently in place for electric utilities' CFP expenditures should apply to CFP expenditures by *all* CFP participants.⁶

Remaining issues and suggestions

The Joint Signatories offer some additional recommendations related to some of the smaller or more nuanced components of this CFP implementation.

Public DCFC – CHAdeMO standard

Concern: As the EV market continues to evolve, electric vehicle manufacturers besides Tesla are moving away from the CHAdeMO standard and instead relying on CCS for DCFC charging, and Tesla is expected to provide an adapter for Tesla owners to utilize CCS. Of all the currently available and known upcoming EV models in North America, the only model still using CHAdeMO is the Nissan LEAF, which will be discontinued by mid-decade. Nissan LEAF vehicles currently represent 18% of EVs registered by the DOL, a market share that will further decline over time.⁷ However, EVs such as the LEAF are attractive, affordable, and reliable used options for lower- and middle-income households. Prevalence of EVs using CHAdeMO is strong in certain markets within Washington and likely will continue to be strong for several years due to the models' abilities to meet urban and certain suburban driving conditions. Utilities and partners must build infrastructure to support future market conditions while also supporting vehicle populations based on historical market dynamics.

⁶ RCW 70A.535.080

⁷ See [Electric Vehicles by Model | Data.WA | State of Washington](#)

Solution: Ecology only mandate CCS connection standards for DCFC while permitting the inclusion of CHAdEMO based on market or regional needs and as requested by applicants for the infrastructure capacity credits.

Backstop aggregator timing and unassigned credits

Concern: The timing for the selection and subsequent contracting of a backstop aggregator as currently represented in the rules creates a gap in unclaimed credits from January 1, 2023, to the effective contract date for the selected backstop aggregator. During this time, credits will be generated. Smaller, less resourced utilities will disproportionately benefit from an established backstop aggregator who will claim and subsequently monetize credits on those utilities' behalf. If these 'gap' credits flow to an entity that is not the ultimate backstop aggregator during the contracting interim period, potential community relationships, utility partnerships, and program development risks arise. Furthermore, program costs and staff impacts are increased when a temporary solution is in place for a short period of time.

Proposed solution: Allow for a delay in capturing and monetizing unclaimed credits that are subject to backstop aggregator ownership until the backstop aggregator is under contract. To this end, we recommend the following language changes:

- WAC 173-424-220(10): Add language clarifying the credits are claimed beginning on Jan 1, 2023.
- WAC 173 424 220(11)(iv)(c): Add language to clarify eligibility includes claiming any credits beginning Jan 1, 2023.

Nonresidential credit generation – Owner submits data to “entity”

Concern: Draft WAC 173-424-220(3)(b)(i) states that a nonresidential EVSE owner will submit the electricity data to the designated “aggregator.” Rather than to the designated “entity.” The current language erroneously presumes that the owner of the charging equipment will not sign an agreement with the utility.

Proposed solution: The be consistent with other provisions, the Joint Signatories support replacing the word “aggregator” with the word “entity” in Draft WAC 173-424-220(3)(b)(i).

Utility-Specific Carbon Intensity Source Data

Concern: Table 10 in the proposed draft rules is using fuel mix data from 2018, which is not the latest nor most representative of current utility generation resources.

Proposed solution: Ecology should update Table 10 using the latest Department of Commerce fuel mix data, which is from 2020.

Utility-Specific and Statewide Average Carbon Intensity

Concern: The draft rules do not explicitly indicate whether utilities have the ability to choose which carbon intensity they use for dispensed electricity. Relatedly, the draft rules do not indicate how the utilities would make this selection and report their chosen carbon intensity, if that option is available.

Proposed solution: Provide clarity in rules about whether, and if so, where, when, and how utilities can select the utility-specific or statewide average carbon intensity.

Limits on DCFC charging plaza size and total amount of previous quarter deficits

Concern: Washington's cap on DCFC capacity credits seems arbitrarily limited. We believe the cap on station size is too small for interested credit generators to make a compelling business case. Both DCFC and hydrogen station developers mentioned this in the August 23 hearing. California regulations allow for larger total nameplate power ratings for DCFC plazas. This concern also applies to hydrogen stations as California's ZEV infrastructure credits for public DCFC and hydrogen refueling were designed to mirror each other.

Proposed solution: The Joint Signatories recommend that Ecology adopt California's respective DCFC capacity credit for the 2500 kW per day size of a light-duty DCFC charging plaza, with the ability for exceptions of up to 6,000 kW if the project can show expected use by medium and heavy duty EVs at these public locations. This recommendation also applies to hydrogen refueling infrastructure, using a capacity credit metric of kg per day consistent with California's LCFS. If Ecology has reasons for a more cautious approach, we still recommend a 6000 kW cap per site for exceptions on a case-by-case basis and a phase in where 2500 kW per day is reached in 2024 or 2025.

DCFC – medium- and heavy-duty capacity credit permission

Concern: In draft WAC 173-424-560(b)(vi), the draft rules clearly describe the eligibility of hydrogen fueling infrastructure capacity crediting for light-, medium and heavy-duty hydrogen fuel cell vehicles. However, a clear description of capacity credit eligibility is not provided for DCFC capacity credits for light-, medium-, and heavy-duty EVs.

Proposed solution: The Joint Signatories encourage Ecology clarify that DCFC capacity credits are permissible for medium- and heavy-duty vehicle infrastructure, just as it is for light-duty EVs, and, if needed, make this explicit in the final CFP rules

Verification

Concern: The draft rules contain language that indicate potential verification actions on electricity carbon intensity pathways in WAC 173-424-610.

Proposed solution: Provide clarity in WAC 173-424-610 that electricity carbon intensity pathways provided in Table 10 are not subject to verification but allow verification of alternative Tier 2 carbon intensity pathways for electricity that are proposed in the future by stakeholders.

Unclaimed nonresidential credits

Concern: It is likely that some nonresidential EV charging activities will not be metered. In this instance, there is a possibility that credits may go unclaimed. The draft rules do not have any provisions enabling estimating, calculating, generating, and subsequently claiming credits from nonresidential electricity applications where credits would otherwise go unclaimed due to inactivity by eligible entities.

Proposed solution: The Joint Signatories recommend that Ecology adopt and modify the approach California used to prevent unclaimed forklift credits. Ecology should expand this provision to other forms of potentially unclaimed charging and should require electric utilities to propose an estimation methodology for these unclaimed nonresidential credits for both non-road and on-road EV charging. For an example, see Section 95483 (c)(4) for an example in the California regulation for forklifts but apply it more broadly to other end uses of electric transportation to prevent unclaimed credits especially in the early years. In other words, this creates a third-in-line credit generation option for many electric transportation end-uses and goes beyond what California created in their LCFS.

eTRU credit claim

Concern: Draft WAC 173-424-220(6)(a) assigns credits associated with electric transport refrigeration units (eTRUs) to eTRU owners. Assigning credits to eTRU owners does not align with credit assignment for other uses of electricity as a transportation fuel, and does not advance the market transformation for the eTRU sector.

Proposed solution: Ecology should assign credits to owners of electric chargers that charge eTRUs, which will support market transformation. Trucks equipped with eTRUs will need charging equipment at every site they visit, which will require funding that the CFP can provide. Assigning credits to eTRU owners is inefficient, as the ratio of chargers to eTRUs is much higher.⁸

Additional Energy Economy Ratios (EERs)

Concern: The draft rules allow some low-carbon fuels to earn CFP credits for certain end-use applications, but electricity cannot due to lack of an EER. The Joint Signatories see this imbalance as resulting in an uneven playing field and an unnecessary limitation on the positive role electricity can have in the CFP.

⁸ More information can be found in a [presentation](#) where CARB staff proposed this solution on page 30.

Proposed solution: The Joint signatories believe this imbalance can be easily rectified by offering a route to obtaining an EER for any current or future electric vehicle end use.

1. *A conservative default EER:* Ecology should create an EER that can be used for any electric end use that do not yet have an EER, and the EER should be both default and conservative (e.g., 2.0). This will motivate end uses such as electric recreational boats, electric agricultural mining and logging equipment, electric sweepers/scrubbers, electric tow tractors, electric planes, electric locomotives and other electric off-road or marine equipment to participate in the CFP but also motivate them to apply for a higher EER
2. *A path to establishing new electric EER for end-uses that do not have one:* Ecology should develop a process by which applicants can petition for approval of new EERs. This process may be amenable to development and implementation through a guidance document.

Data collection and reporting – disaggregating forklift charging based on model year

Concern: Draft WAC 173-424-420(3)(f) states that entities reporting forklift charging must provide data “separated by electricity used to charge forklifts built in or before model year 2022 and electricity used to charge forklifts built in model year 2023 and after.” The generation of credits through charging of electric forklifts is affected by a given forklift’s model year. Draft WAC 173-424-540(2) describes how credits for “forklifts from model year 2023 and earlier” must be calculated; forklifts that do not fit this description (that is, forklifts from model year 2024 and newer) generate credits per -540(1) using established energy economy ratios contained in Table 4.

Firstly, the delineation of model years is not consistent between these two quoted sections. Secondly, it is unclear what Ecology’s expectations are for how reporting entities would meet the reporting requirement to disaggregate charging by model year. Warehouses with electrified forklifts often have shared EVSE. To the extent that meeting this reporting requirement necessitates charging certain forklifts at certain EVSE, the requirement will significantly complicate day-to-day operations and may result in inaccurate data.

Proposed solution: The Joint Signatories firstly recommend that the language in -540(2) be adjusted to align with -420(3)(f) by changing the “forklifts from model year 2023 and earlier” to “forklifts from model year 2022 and earlier.” Secondly, we recommend including language describing some acceptable routes to meeting the charging data disaggregation requirement in -420(3)(f). Our suggested revisions are included in our proposed redlines to the CR-102 draft rules, submitted as an attachment to these comments.

Recordkeeping – clarity regarding meaning of “monthly utility bills”

Concern: In draft WAC 173-424-400(1)(i), CFP participants are required to retain records for at least 10 years, including “records related to fuel supplying equipment registration.” This category of record includes “monthly utility bills.” It is unclear whether this rule language is intended to require utilities to keep copies of *customers’* bills.

Proposed solution: The Joint Signatories request some clarification regarding what Ecology requires to meet this CFP recordkeeping necessity. To the extent all bills issued by a utility to all customers are subject to this recordkeeping requirement, we recommend that the rules allow for flexibility in how this data can be provided to Ecology. Specifically, rather than physical or digital copies of every bill sent to every customer over 10 years, allow utilities to provide the data through queries on a utility’s billing database. Such an approach would ease the effort required to anonymization the data and avoid concerns around disclosure of sensitive customer information.

Conclusion

The Joint Signatories again thank Ecology for the opportunity to provide input into the Clean Fuel Standard rulemaking process. We appreciate your time and consideration of our comments.

Sincerely,



**Seattle
City Light**

CHELAN COUNTY

