



31 August 2022

Department of Ecology  
State of Washington  
P.O. Box 47600  
Olympia, WA 98504-7600

**Re: Climate Solutions comments on proposed rules for Chapter 173-424 WAC, the Clean Fuel Standard**

Dear Rachel Assink,

Climate Solutions thanks you for the opportunity to submit comments on the proposed rules for Chapter 173-424 WAC, the Clean Fuel Standard. Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

Thank you for your hard work on this important rule. Our thoughts and recommendations on various elements follow.

### **Carbon intensity reduction trajectory**

*We strongly support the 20% reduction in carbon intensity of fuels in 2034* as outlined in Tables 1 and 2 of the proposed rules. The Legislature granted the Department of Ecology (“the Department” or “Ecology”) the authority to set this trajectory, which most closely aligns with achieving the statutory reduction in greenhouse gas emissions the legislature and executive committed to.<sup>1</sup> This trajectory is of critical importance in our view, and in the view of many entities who worked to pass the law.

The trajectories of other states with Clean Fuel Standards are worth noting, given the law’s direction to harmonize with other programs where feasible. All three West Coast states and provinces that have adopted a Clean Fuel Standard, apart from Washington, require a 20% reduction in carbon intensity by 2030. Washington should get as close to alignment with the rest of the West Coast as possible.

Such a standard better aligns with our statutory greenhouse gas limits, which were passed in 2020 to align with the most recent climate science: Washington must reduce its emissions to 45% below 1990 levels by 2030, a 70% reduction by 2040, and a 95% reduction and net zero emissions by 2050. By 2040, we must reduce our emissions by more than 70 MMT from our most recent inventory year, necessitating a strong policy response. The Clean Fuel Standard will work alongside other climate policies to help achieve the statutory reduction in emissions the legislature and executive committed to, but the hard numbers make it clear that rules must be as ambitious as legally possible for the state to achieve its emissions limits. Thus, we are glad to see in the proposed rule that the

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<sup>1</sup> RCW [70A.45.020](#)

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Department is using discretion granted by the statute to require the strongest reduction in the carbon intensity of fuels possible under the law, and more closely align with Washington’s statutory greenhouse gas emission reduction requirements.

Not only will this strong trajectory better align with state climate law, but it will also lead to greater air pollution reductions and spur the local, clean economy. An increase in cleaner fuels will cause criteria pollution reductions alongside greenhouse gas emission reductions that will benefit the health of Washingtonians, particularly those who live near sources of transportation pollution, which disproportionately burden BIPOC communities and low-income communities. At the same time, increased clean fuels infrastructure and production will lead to new economic and job opportunities.

We have also signed on to a joint letter alongside 33 other organizations, businesses, and community groups and 25 local elected officials in support of a trajectory resulting in a 20% reduction in carbon intensity in 2034.

**WAC 173-424-110 Definitions.**

The definition for “Disproportionately impacted communities” refers to the Clean Energy Transformation Act (“CETA”) and the Healthy Environment for All (“HEAL”) Act but neither use that term, rendering what is considered a “disproportionately impacted community” unclear. It is critical that the Clean Fuels Program result in investments in communities that have been disproportionately burdened by air pollution. This is why the underlying statute requires that 30% of credit revenue generated by utilities be reinvested in transportation electrification projects in nonattainment areas or in “disproportionately impacted communit[ies] identified by the department of health.” *We ask that the rules provide more clarity on the definition of “disproportionately impacted communities”.* Right now, we suggest referencing definitions from the HEAL Act that define “overburdened community” and “vulnerable populations.” It is important that benefits reach not only those in particular geographic areas, but those individuals or communities within certain areas that experience disproportionate burden and/or have fewer resources to alleviate burdens—in other words, that benefits reach vulnerable populations in overburdened communities. Ecology, as it implements its obligations under the HEAL Act, should also revisit the definition in this rule to ensure that vulnerable communities receive direct benefits from the Clean Fuels Program.

We also want to note that “Single-family residence” is defined in this section but is not used elsewhere in the rule. Therefore, we recommend its removal.

For the definition of “Multifamily housing” we recommend aligning with the definition in the Oregon program: “a structure or facility established primarily to provide housing that provides four or more living units, and where the individual parking spaces that an electric vehicle charger serves, and the charging equipment itself, are not deeded to or owned by a single resident.” This gets at the question of charging and parking most directly, which is relevant to the Clean Fuels Program.

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**WAC 173-424-220 Designation of fuel reporting entity for electricity.**

***Nonresidential electric vehicle charging***

The rule says the “owner of the EVSE” may first claim credits from nonresidential electric vehicle (“EV”) charging; however, then states if the “owner or service provider” does not, then the utility may claim the credits. This is confusing since the service provider is not listed as being eligible for claiming credits. If service providers were listed alongside the owner of the EVSE, the rule would be unclear as these may be different entities. To eliminate confusion and ensure consistency in the rule, we suggest aligning with California’s rule, which simply lists the EVSE owner as eligible to claim credits first.

***Suggested language for WAC 173-424-220 (3)(b):***

If the owner ~~or service provider~~ of the electric-charging equipment does not generate the credits, then an electric utility or its designated aggregator may generate the credit...

We support nonresidential electric vehicle charging encompassing multifamily housing sites as in the proposed rule.

***Residential electric vehicle charging***

For residential EV charging base credit claims, we support this order of eligibility: utility, backstop aggregator, EV manufacturer. *We do not support incremental credits in this rule* (for more detail, see below under comments regarding WAC 173-424-420 Specific reporting requirements). If incremental credits are included in the rule, the order of eligibility should be consistent with the order for residential base credits.

***Backstop aggregator***

Climate Solutions supports the designation of a backstop aggregator. We support the provision that the backstop aggregator must be a 501 (c) (3). We understand that reviewing applications will take time, and that Ecology plans to designate an initial aggregator by May 31, 2023. By this point, the Clean Fuels Program will have been operating for five months. *We recommend that any residential charging credits that are not claimed by utilities during this time are held until the designation of a backstop aggregator.* This will allow the backstop aggregator to begin reinvesting credits as soon as possible. If a backstop aggregator is not approved by this date, the credits in question can be released to the next claimants per the rule until which time a backstop aggregator is designated.

*There should be further guidance for reinvestments by the backstop aggregator.* It is critical that the Clean Fuels Program help address inequities in access to clean transportation options. As such, Ecology should ensure that projects and programs funded by the aggregator benefit disproportionately impacted communities (see above regarding definition) and communities in non-participating utility territories. Currently, the rule specifies that as part of the application to be designated backstop aggregator, an applicant must include a description of how they “will promote transportation electrification statewide or in specific utility service territories, if applicable, prioritizing projects that directly benefit disproportionately impacted communities” and the backstop

aggregator's annual report must include an estimate of "the extent to which it directly benefited disproportionately impacted communities." Though the rules state that Ecology will evaluate applications based on the applicant maximizing benefits and prioritizing projects that benefit disproportionately impacted communities, neither the application nor the annual report amount to any enforceable parameters or oversight.

Oregon's Clean Fuel Program includes an incremental aggregator and its rule created an Equity Advisory Committee to help evaluate applications and to design programs and projects for the aggregator to implement. We would like to see a similar level of engagement in Washington, at minimum. We recommend that the Department see if the Environmental Justice Council would like to participate in this process. We also ask that Ecology require that a minimum percentage (at least 40%) of aggregator reinvestments directly benefit overburdened communities, while other investments benefit communities in non-participating utility areas, and the aggregator must detail how this was achieved in its annual report.

#### **WAC 173-424-400 Recordkeeping.**

It appears that any registered party reporting any fuel may claim environmental attributes through book and claim accounting. *We believe that allowing fossil natural gas providers to claim a lower carbon intensity ("CI") via the purchase of environmental attributes for biomethane that is used out-of-state is inconsistent with the intent of the law and strongly oppose including unbundled environmental attributes in calculating the CI of liquid fuels.* There should be a match with fuel *delivered and used* in-state to rectify this potential issue. After all, the statute includes requirements for local clean fuels production, so it is counter to the intent of the law to allow credit for clean fuels that may not be delivered to Washington. It would also be inconsistent as other fuels have deliverability and use requirements.

#### **WAC 173-424-420 Specific reporting requirements.**

##### ***Biomethane-based natural gas and environmental attributes***

Regarding biomethane, the proposed rule includes the following language: "The retirement records must show enough renewable thermal certificates were retired to cover the volume of biomethane claimed as a fuel in the CFP and those certificates must be from the same biomethane production facility to which the fuel pathway code is assigned." We interpret this to mean that environmental attributes must be connected with the pathway/carbon intensity of the fuel being claimed and these environmental attributes are being retired so they can not be claimed elsewhere, which we strongly support.

##### ***Incremental credits***

*As detailed in earlier comments, we do not support the inclusion of incremental credits in this rule.* There is very little opportunity based on smart charging given the lack of variance in hourly CI in the utility territory best poised to generate incremental credits in this way.

The other option for generating incremental credits is through the purchase of Renewable Energy Credits (RECs), which presents a host of challenges. First, their inclusion may lead to a double claim on the environmental attributes with other states' policies, notably Oregon's 100% clean energy law and California's cap-and-trade

program. The latter does not require the retirement of RECs for renewable electricity when accounting for the greenhouse gases associated with this power regulated under the program. Therefore, renewable electricity being used in California would be considered zero-carbon under California’s cap-and-trade program, but the REC may be separated and used under Washington’s Clean Fuels Program to lower the CI of the electricity as a transportation fuel. This would constitute the zero-carbon attribute being claimed by two entities—one in California and one in Washington—which we do not support. There is a similar concern with how Oregon’s 100% clean electricity law. Washington already has a clearly charted, legal pathway to 100% clean electricity; attempting to leverage the Clean Fuels Program for this purpose leads to possibly negative policy interactions.

Allowing for the generation of incremental credits through REC purchases also runs the risk of diluting the Clean Fuels Program. We understand that there is some concern with the Clean Fuels Program market having an overly large surplus of credits in its early years since Washington’s program is starting with both a cleaner electricity grid and more EVs on the road than either California or Oregon had at the inception of their programs. Evidence from Oregon shows that concern that there may be too many incremental credits for a healthy market is not unfounded: “As of Q4 2021, approximately 81% of non-residential charging reported to the CFP has been paired with renewable electricity through the retirement of renewable energy credits or the use of a utility green power program.”<sup>2</sup> (We view utility green power programs differently than pairing unbundled RECs with EV charging.) It is clear there is a real opportunity for registered parties to purchase cheap, out-of-state RECs that in turn, provide them with more value on the Clean Fuels market through the reduced CI of their fuel. However, allowing this in the program does not necessarily spur new, clean electricity generation in Washington (which is already required under CETA), nor provide other, local benefits. It also increases the number of credits available in the market early on.

*For these reasons, we oppose allowing incremental credit generation under this rule. If incremental credits are included in the rule, it is important that there are further safeguards around RECs to ensure local benefit and reduce the likelihood of double claiming. There should be a deliverability requirement to a balancing authority serving Washington customers. In addition, RECs claimed for incremental credits should not also be counted towards a utility’s CETA compliance, nor toward a utility’s specific CI. And lastly, as mentioned above, RECs associated with power imported from California or other states where the underlying energy is considered zero-carbon, even if the REC has been separated, should not be allowed to generate incremental credits under Washington’s Clean Fuels Program.*

### **Electricity credit reinvestments**

*The rule should include more specificity on the process for utilities to determine programs and projects funded by credit revenue. Further guidance documents should require the provision of more information on investments, including labor practices. And, there should be an enforcement mechanism to ensure that credit revenue is being reinvested per the parameters of the law. The rule requires utilities to provide a description of those who*

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<sup>2</sup> Oregon Department of Environmental Quality. “Clean Fuels Program Fourth Quarter 2021 Data.” <https://www.oregon.gov/deq/ghgp/Documents/cfpQ4datasum2021.pdf>.

benefitted from the program or projects funded through their credit revenue. However, there are no requirements for explaining *how* investments directly benefitted disproportionately impacted communities, as required by law. There is also no oversight mechanism listed to ensure that utilities are abiding by this incredibly important element of the program. For the rule or upcoming guidance, we recommend at least providing program or project examples. Ideally, these would be shaped with guidance from the Environmental Justice Council, should they choose to provide it. California’s rule includes a list of examples for “holdback credit equity projects” as a point of reference.

There are also no parameters around labor practices (such as working with entities that provide prevailing wages, have collective bargaining agreements, are women- or minority-owned, provide apprenticeships, and so on) or reporting which, while not required in the law, would be consistent with Washington’s clean energy build-out under CETA.

A portion of utility credits must be spent, per statute, on programs and projects as determined by Ecology and the Department of Transportation. The statute lists examples that are not limiting. There should be an open process and transparency around this list of programs and projects, and the considerations above are relevant.

Regarding nonmetered residential EV charging, the rule states, “a nonutility credit generator must use credit revenues to increase consumer EV resources to promote transportation electrification.” Given requirements surrounding a backstop aggregator (see above), this language could potentially cause confusion. If a given utility does not claim credits, nor the backstop aggregator, then the EV manufacturer may claim these credits, in which case this would seemingly apply.

### **WAC 173-424-540 Calculating credits and deficits.**

#### ***Fixed guideway systems and forklifts***

*We do not believe that fixed guideway systems built before or after 2023 should be treated differently under the program.* Other systems are not treated differently based on when they were constructed or manufactured. In other words, the Clean Fuels Program’s credit and deficit system is based on fuel use, not infrastructure construction. Moreover, fixed guideway systems require maintenance over time. Transit agencies should not be penalized for having the forethought to build cleaner options early on. Thus, we posit that there be no distinction as to when fixed guideway systems were built. All should be credited equally, with the appropriate Energy Economy Ratio (EER).

For similar reasons, we do not believe credits for electric forklifts should be differentiated by model year.

#### ***Residential EV charging***

We appreciate that metering is not required to generate residential charging credits. We understand that Ecology is attentive to any double counting issues so metered charging would not be counted on top of unmetered charging estimates. Out of the options for determining total electricity dispensed as a transportation fuel for nonmetered charging, we believe (3)(b)(ii) is best method.

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**WAC 173-424-550 Advance crediting.**

We support the inclusion of advance crediting but strongly recommend that this rule align with Oregon's program. In Oregon's program, public transit entities, political subdivisions of the state, Tribes, school districts, and companies under contract to provide services to a political subdivision of the state or a school district are eligible. The proposed rule limits eligibility to "Washington state department of transportation or other public entities that are implementing state transportation investment projects and programs to be funded through an omnibus transportation appropriations act." We believe this is overly restrictive, particularly since it would preclude funding for good investments that do not currently have it—unlike those funded through an omnibus transportation act.

The law does require that the program allow for generation of credits from "state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce greenhouse gas emissions and decarbonize the transportation sector." We strongly agree with the proposed rule that this applies to "programs and projects that are eligible to generate credits". However, the law does not specify that these investments receive advance credits specifically, nor would such projects be precluded from otherwise generating credits under the program. In our view, advance credits serve to *expand* investments in transportation electrification by providing upfront financial resources to transition vehicle fleets to zero emissions. Certain projects funded by an omnibus transportation appropriations act may still need additional capital; such projects should not be the *only* projects eligible, however. We also want to ensure that advance credit eligibility as written in the proposed rule includes projects and programs to be partially funded through an omnibus transportation appropriations act. Ensuring that local government, school district, Tribal, and public transit projects *not* receiving funding from through an omnibus transportation appropriations act are eligible is important for spurring fleet electrification among entities that could use the upfront support. Retaining the proposed limit on advance credits to 5% of deficits would prevent this change from impacting the overall market.

*Suggested language for WAC 173-424-550 (2)(a):*

(2) Eligibility to generate advance credits.

(a) The following entities may apply for advance credits:

(i) Washington state department of transportation or other public entities that are implementing state transportation investment projects and programs to be partially or fully funded through an omnibus transportation appropriations act;

(ii) Public Transit Agencies;

(iii) Political subdivisions of the State of Washington;

(iv) Tribes;

(v) School Districts; and

(vi) Companies under contract to provide services to a political subdivision of the State of Washington or a Washington School District may apply if the political subdivision endorses the application, and the vehicles covered by the application are intended to provide contracted services to the public.

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**WA 173-424-560 Generating and calculating credits for ZEV fueling infrastructure pathways.**

For Hydrogen Refueling Infrastructure Pathways, *only fueling stations dispensing green electrolytic hydrogen should be eligible*. This is consistent with the approach to hydrogen as a fuel being taken by state law.<sup>3</sup> An analysis of California’s approved fuel pathways and hydrogen fueling stations generating capacity credits show that at least one of registered entities is using fossil natural gas as a feedstock for its hydrogen. Since capacity credits do not necessarily represent clean fuels additionality or displacement of dirty fuels, it is especially important to ensure that these credits are encouraging fueling stations that will be dispensing clean fuels. We appreciate that there is a company-wide requirement for carbon intensity and renewable content.

**WA 173-424-600 Carbon intensities.**

It is important that alternative jet fuel, or sustainable aviation fuel (“SAF”), be eligible to participate in the Clean Fuels Program with an approved fuel pathway. Though SAF with an existing OR-DEQ or CARB pathway would be able to use that pathway (adjusted for Washington), our understanding is that these resources are already under contract. Thus, new SAF resources would not be eligible until 2025, when Tier 2 fuels without OR-DEQ or CARB pathways can apply. The result is that we may see SAF going to other states where it is better incentivized, unless Washington provides SAF pathways sooner. *We strongly suggest that Ecology consider applications for SAF pathways at the beginning of the program*. Aviation leads to significant climate and air pollution—in Washington, jet fuel and aviation gasoline is responsible for more climate pollution than on-road diesel.<sup>4</sup> And while Washington has a stronger policy regime to address on-road gas and diesel emissions, it is very limited in addressing aviation emissions. The Clean Fuel Program is one tool that Washington has to encourage cleaner aviation, and it should use it as speeding up the decarbonization of this sector is incredibly important.

**WA 173-424-630 Determining the carbon intensity of electricity.**

*We understand that utilities must use a utility-specific carbon intensity and may not elect to instead use the statewide electricity mix. However, there has been misunderstanding among stakeholders so we recommend that the rule more clearly state this.*

If a utility *were* to be able to opt-in to a statewide mix, then utility-specific carbon intensities being claimed by a utility should be removed from the statewide average. Otherwise, the effect will be that utilities with a CI that is higher than the statewide average will opt to use the statewide average, while utilities with lower CIs will use their specific mix and in aggregate, the claimed CI for electricity will be artificially lowered. Of course, being clear that utility-specific CIs must be used will remove this problem.

**WA 173-424-710 Public disclosure.**

Per the rule, the Department must post a monthly credit trading activity report, a quarterly data summary, and an annual report that includes the average cost or cost-savings per gallon of gasoline, diesel, and other fuel types

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<sup>3</sup> See Substitute Senate Bill 5910 (now law) from the 2022 legislative session.

<sup>4</sup> Washington State Department of Ecology. “Washington State Greenhouse Gas Emissions Inventory: 1990-2018.” January 2021. <https://apps.ecology.wa.gov/publications/documents/2002020.pdf>.



and the total greenhouse gas emissions reductions. Transparency regarding the program is important, and we encourage the Department to ensure this information is easily accessible and user-friendly. The California Air Resources Board's data dashboard<sup>5</sup> for their program is a good example. When communicating the impact on a cost of a gallon of gasoline and other fuels, it is important that the Department contextualize this information. For example, calculating the price impact simply by applying the average credit price to the CI of a gallon of gasoline (as is done by the Oregon Department of Environmental Quality<sup>6</sup>) presents a high-end cost impact estimate. This is because it assumes entities complying with the standard are not necessarily using the lowest-cost method to comply, such as by taking action to reduce the lifecycle CI of their product that costs less than buying credits on the market. It also assumes a direct pass through in cost, which is not how the market always works due to external forces of supply and demand that impact fuel prices. Finally, any price impact from the Clean Fuels Program is often overshadowed by international market forces. We have seen this in California, where the cost of gas and diesel has simply not correlated with Clean Fuels credit prices.<sup>7</sup> Therefore, we ask Ecology to provide this fuller context as a part of its information sharing, in addition to posting the formulas used in calculations.

#### **WAC 173-424-900 Tables.**

We support the Energy Economy Ratio ("EER") values as listed in Table 4.

We support matching the land use change CI values, as listed in Table 5, to those used by California's program, which is reflected in the rule. It will be important that these are periodically reevaluated as further research is done.

*It is important that WA GREET incorporates methodology to appropriately score the carbon intensity of a fuel's lifecycle while not incentivizing environmental harm. For this reason, it is critical that biomethane is scored appropriately. The counterfactual included in the scoring should be set so that it encourages methane capture for existing entities, but that revenue from potential Clean Fuels credit sales itself is not a driver for consolidation or creation of new concentrated animal feeding operations, which cause a lot of environmental harm. Table 8 in the rule matches the CI value for dairy and swine manure-derived biomethane to California's. We strongly suggest reevaluating this frequently and monitoring for adverse impacts or perverse incentives.*

#### **Text errors**

We wanted to kindly point out a few possible text errors in the proposed rule:

- The "Illegitimate credits" definition includes internal commentary.
- We are unclear if WAC 173-424-220 (3)(b)(i) should say "designated entity" and not "designated aggregator"

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<sup>5</sup> This dashboard can be found at <https://ww2.arb.ca.gov/resources/documents/lcfs-data-dashboard>.

<sup>6</sup> Oregon Department of Environmental Quality, "2020 Annual Cost of the Clean Fuels Program." <https://www.oregon.gov/deq/ghgp/Documents/cfp2020AvgCost.pdf>.

<sup>7</sup> Climate Solutions' analysis based on CARB and EIA data, available upon request.



- WAC 173-424-600 (5)(b) begins with an unclear sentence that may be missing a word and/or referring to an incorrect section: “Except CARB or OR-DEQ certified fuel pathways as provided in subsection (3) of this section that, ecology will not start accepting Tier 2 applications until July 1, 2025.”
- Electricity/Ocean Going vessels are missing from Table 4

### **Conclusion**

Climate Solutions strongly supported the passage of the Clean Fuel Standard and we have been excited to engage in this rulemaking to ensure that the program is effective and equitable, and that it reduce climate pollution to the maximum extent possible.

We are happy to discuss any of our thoughts further and answer questions. Thank you for your hard work.

Sincerely,

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