



Antonio Machado

Senior Manager, Northwest Regulatory Affairs and Fuels

October 3, 2024

Sent via upload to: <https://ecology.commentinput.com/?id=R5Ysf3Ud>

Mr. Adam Saul
CFS Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: WSPA Comments on Draft 2024 Clean Fuel Standard Amendments

Dear Mr. Saul,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology (Ecology) 2024 Draft Clean Fuel Standard (CFS) Regulation Amendments. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the West, including Washington. This includes the transporting and marketing of petroleum, liquid fuels, natural gas, and other energy supplies.

General Comments

Unmetered Residential EV Charging

WSPA supports Ecology's efforts to implement accurate checks and balances for credit estimation and verification to meet the goals of the verification program and ensure the validity and proper accounting of all credits. Accordingly, WSPA recommends against exempting non-metered residential EV charging from third-party verification, ensuring that all aspects of credit generation undergo the same rigorous validation and verification process. This verification should encompass a review of EV charging efficiencies, average miles traveled, the distribution of EVs in Washington, comparisons with actual on-board EV data, residential surveys, and utility meter reconciliations.

Sustainable Aviation Fuel

Initially, the purpose of this rulemaking was to incentivize the production of sustainable aviation fuel. However, the current proposed language does not appear to address this objective. WSPA requests that Ecology provide stakeholders with future plans to incentivize sustainable aviation fuel or alternative jet fuel in this rulemaking.

Renewable Natural Gas (RNG) – Avoided Methane and Deliverability

Limiting avoided methane credits for projects established before 2023 penalizes entities that invested early in anticipation of the Washington CFS's adoption. This restriction could make it difficult for facilities to cover operational costs, potentially forcing them to discontinue operations and resulting in increased methane emissions to the atmosphere.

Regarding deliverability, WSPA recommends that Washington not adopt CARB's proposal to apply electricity deliverability standards to the natural gas system, as it overlooks key differences in how these energy systems operate. Unlike electricity, RNG can be stored and transported through the national pipeline network using an effective book-and-claim tracking system, which promotes RNG development across the U.S. without requiring direct physical delivery. Imposing CARB's

deliverability standards would add unnecessary administrative and cost burdens, potentially blocking imported RNG and penalizing early investors who anticipated Washington's CFS program.

Specific Comments

WAC 173-424-110 - Definitions

Renewable gasoline is not defined in WAC 173-424-110, despite being mentioned in WAC 173-424-120(2)(k). Ecology should include a definition for renewable gasoline in WAC 173-424-110 to ensure clarity and consistency.

WAC 173-424-420(10) & WAC 173-424-430(4) - Specific and Annual Reporting Requirements

Ecology should provide at least ten business days for making corrections after a correction request is approved, instead of the current 2 business days. This extension would accommodate reporting entities who may be unavailable due to other duties, vacation, or other commitments.

WAC 173- 424-700(3) – Credit and Deficit Modifications

WSPA has several concerns regarding the credit or deficit modification provision proposed in WAC 173-424-700(3). In 2023, total credit generation was 1.946 million MT, while administrative credit adjustments accounted for a reduction of only 6,848 MT, or 0.35% of the total. Similarly, deficit generation in 2023 was approximately 905,000 MT, with administrative deficit adjustments amounting to 17,554 MT, or 2% of the total, most of which occurred during the first two quarters of the program. These administrative adjustments have decreased each quarter and were initially higher due to the program's implementation without a reporting-only period.

The thresholds established in the proposed table are extremely low relative to the size of typical fuel transactions. For instance, a transaction involving two railcars of renewable diesel with a carbon intensity of 20 gCO₂e/MJ equates to approximately 615 MT of credits, which significantly exceeds the highest penalty threshold, despite representing only a small portion of the total fuel volume transacted in Washington. We recommend that Ecology revise these thresholds upward to better align with the scale of common fuel transactions.

Additionally, we suggest that Ecology reassess whether a tiered penalty system based solely on the number of credits or deficits is appropriate, given the disproportionate impact on fuels transacted in larger quantities for similar types of errors.

In light of current trends in administrative credit and deficit adjustments, as well as the potential negative impacts of low credit thresholds and high penalty multipliers on regulated entities and the credit market, we recommend that Ecology remove the proposed credit and deficit modifications from the draft rule.

WAC 173- 424-700(3) – Penalties for Reporting Errors

Given the relatively low frequency of administrative credit adjustments in proportion to the market size and the observed trend of decreasing adjustments over time, the proposed penalty structure—which would multiply future credit adjustments by two to four times—may result in greater market disruption than it aims to prevent.

During rulemaking workshops, Ecology indicated that the primary purpose of the penalty structure

is to reduce reporting errors and mitigate subsequent credit market distortions. However, administrative credit adjustments currently constitute a very small portion of the total credits and deficits generated each quarter, especially given the program's maturity. To establish appropriate penalties, Ecology should consider using a percentage of the credits or deficits generated, rather than setting a threshold based on an absolute number of credits. For example, if adjustments are required for less than 1% of the credits or deficits generated, these adjustments could be made to the reporting entity's account without penalties. Conversely, if the discrepancy represents a significant portion of the credits or deficits generated, such as more than 25%, Ecology could initiate an investigation to determine whether penalties are warranted.

WSPA believes that multiplying credit and deficit adjustments by two to four times is likely to have an excessively punitive effect on reporting entities and could exacerbate market disruptions. The high multipliers proposed may offset or even exceed any reduction in the total quantity of credit/deficit adjustments that might be achieved by decreasing the number of occurrences. Moreover, given the low credit thresholds proposed, entities could face a 4:1 penalty for a first offense involving only one transaction error, which contradicts Ecology's stated intent to avoid harsh penalties for minor mistakes.

We recommend reevaluating the necessity of this penalty structure, as it may not be required to enhance reporting accuracy and could undermine Ecology's objective of preventing market distortion while avoiding excessive penalties. While we maintain that the credit and deficit modification proposal is unnecessary for the program, should Ecology decide to proceed, we offer several suggested modifications for consideration. Instead of establishing a penalty threshold based on an absolute number of credits, Ecology could use a percentage of the credits or deficits generated.

WAC 173- 424-700(3) – Verified Exceedances/True-ups

During the September 9, 2024 Workshop, Ecology staff expressed their intention to align with the California Air Resources Board's (CARB) current proposal to issue four deficits for every credit generated due to a verified CI exceedance. This penalty appears disproportionate to the severity of the violation.

Furthermore, unlike the proposed rules in California and Oregon, the Washington CFS does not provide an opportunity for pathway holders to receive additional credits through a true-up process when their verified CI is lower than their certified CI. Implementing such a mechanism in Washington would further incentivize fuel pathway holders to adopt a more conservative approach when selecting a margin of safety for their certified CI, potentially reducing occurrences of verified CI exceedances.

We urge Ecology to consider reducing the severity of the penalty for verified CI exceedances and to explore the inclusion of a credit true-up mechanism for fuel pathway holders. This approach would promote greater accuracy in CI reporting and better align Washington's regulations with those of neighboring states.

WAC 173-424-710 (5) – Public Disclosure

Ecology should retain subsection WAC 173-424-710 (5) despite its presence in the statute. Numerous sections within WAC 173-424, including the CI standards, are also covered by statute. WSPA recommends that Ecology maintain this subsection to ensure the clarity and comprehensiveness of the regulation.

WAC 173-424-810 (1) – Validation and Verification

Given that this CFS amended regulation is unlikely to be adopted before the end of 2024, Ecology should not mandate verification of 2025 data for a fuel pathway. Instead, the first annual verification statement should be deferred to 2028, encompassing the verification of fuel pathway data for 2026 and 2027. This adjustment will also allow Ecology additional time to qualify third-party verifiers under the CFS.

WAC 173-424-820(2)(b)(iv) – Recertification of Fuel Pathways

For the recertification of fuel pathways, Ecology should accept the California or Oregon Simplified CI Calculators (CA-GREET or OR-GREET models) used in California and Oregon.

WAC 173-424-820(4) & WAC 173-424-830(2)(k) – Crude Oil

Ecology should remove these sections, as requiring verification of crude oil reports is unnecessary. Not all fuels supplied in Washington originate from in-state refineries, and the crude oil processed by these refineries does not account for all the crude oils used to supply fuel in Washington. Verifying the crude oils processed by Washington state refineries would therefore place an undue burden on these refineries without adding value to the CFS.

WAC 173-424-830(2)(c) – Site Visits

Site visits to reporting entities' offices should not be mandatory. Virtual meetings using platforms such as Zoom, Webex, Microsoft Teams, and similar tools should be considered sufficient. A site visit should only be required at the producing facility for the initial fuel pathway validation.

WAC 173-424-850 – Conflict of Interest

Ecology should explicitly state in the regulation that utilizing the same verification body for GHG verification in Washington state, as well as for GHG and/or LCFS verification in Oregon, California, Canada (both federal and provincial), and for EPA RFS RIN verification, does not constitute a conflict of interest.

WAC 173-424-900 – Table 7

During the September 9, 2024 Workshop, Ecology stated that the removal of the substitute pathway code RNWD0116 was unintentional and would be corrected in the next version of the rule. WSPA requests that Ecology correct this error and reinstate the renewable diesel substitute pathway in Table 7.

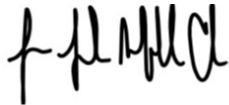
WAC 173-424-900 – Table 8

Ecology should set the temporary fuel CI scores for biodiesel, renewable diesel, alternative jet fuel, renewable naphtha, renewable gasoline, and renewable propane at 45 and 65 gCO₂e/MJ. There is no justification for Ecology to arbitrarily vary these CI scores. Specifically, fuels produced from distiller's corn oil, a by-product of ethanol manufacturing, should be assigned a CI score of 45 gCO₂e/MJ.

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WSPA appreciates the opportunity to provide comments on this important proposed regulation. We encourage Ecology to reach out for any clarification regarding these comments. Please do not hesitate to contact me directly at (360) 594-1415 or via email at amachado@wspa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Spiegel', is positioned below the closing 'Sincerely,'.

Cc: Jessica Spiegel - WSPA