



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

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

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

11/28/05

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CONCISE EXPLANATORY STATEMENT

I. Introduction

A. Why is this rule being adopted:

The 2005 Washington State Legislature passed Engrossed Substitute House Bill 1397 (ESHB 1397). This bill adopts California vehicle emission standards and directs the Department of Ecology (Ecology) to adopt rules to implement these standards for passenger cars, light duty trucks, and medium duty passenger vehicles. It also directs Ecology to amend the rules over time to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal Clean Air Act). The legislature passed this statute in order to reduce motor vehicle emissions of greenhouse gases, ozone forming pollutants and cancer-causing air toxics in Washington State.

ESHB 1397 recognizes the importance of mitigating climate change by limiting emissions of greenhouse gases from motor vehicles. Cars and trucks account for over fifty-five percent of carbon dioxide emissions in Washington. The control and mitigation of climate change will have positive economic impacts on Washington in areas such as public health, water supply, agricultural productivity, and reduced environmental degradation.

The California vehicle emission regulations have three main methods for reducing vehicle emissions: low emission vehicles, zero emission vehicles, and greenhouse gas emission reductions. Consistent with ESHB 1397, Ecology does not propose to adopt the zero emission vehicle program regulations contained in Title 13, section 1962 of the California Code of Regulations.

In ESHB 1397, the legislature of the state of Washington found that:

(1) Motor vehicles are the largest source of air pollution in the state of Washington, contributing approximately 57 percent of criteria air pollutant emissions, 80 percent of air toxics emissions, and 55 percent of greenhouse gas emissions;

(2) Air pollution levels routinely measured in the state of Washington continue to harm public health, the environment, and the economy. Air pollution causes or contributes to premature death, cancer, asthma, and heart and lung disease. Over half of the state's population suffers from one or more medical conditions that make them very vulnerable to air pollution. Air pollution increases pain and suffering for vulnerable individuals. Air pollution imposes several hundred million dollars annually in added health care costs for air pollution-associated death and illness, reducing the quality of life and economic security of the citizens of Washington;

- (3) It is necessary to reduce greenhouse gas emissions from transportation sources, and it is equitable to seek such reductions because reductions in greenhouse gas emissions have already been initiated in other sectors such as power generation;
- (4) Reductions in greenhouse gas emissions made under this act should apply toward any future federal, state, or regional comprehensive regulatory structure enacted to address reducing greenhouse gas emissions;
- (5) Under the federal Clean Air Act, the state of Washington has the option to implement either federal motor vehicle emission standards or California motor vehicle emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles;
- (6) Opting into the California motor vehicle standards will provide significant and necessary air quality benefits to residents of the state of Washington; and
- (7) Adoption of the California motor vehicle standards will provide consumers more clean vehicle choices, provide better warranties to consumers, and provide sufficient air quality benefit to allow additional business and economic growth in the key airsheds of the state while maintaining conformance with federal air quality standards.

ESHB 1397 makes it illegal to register, lease, rent, or sell for use in the state any passenger car, light duty truck and medium duty passenger vehicle with less than 7,500 miles that does not meet the cleaner California vehicle emission standards.

This new chapter of the Washington Administrative Code adopts by reference the specific California emission standards and requirements needed to implement the legislative intent to have California certified vehicles sold in Washington. It establishes that the requirements will apply to 2009 and subsequent model year vehicles, provides certain exemptions, provides for a phase in of the requirements, and establishes reporting, compliance, and enforcement procedures that affect automobile manufacturers and dealers. It also establishes a penalty of up to \$5,000 per vehicle for violations of these requirements.

The effect of this rule is that it will be illegal to register, sell, lease or rent for use in the state 2009 and later model year vehicles that are not certified to California standards. The California certified vehicles that will be sold when this rule goes into effect will have lower emissions of ozone forming pollutants, cancer causing air toxics and greenhouse gases than would otherwise be the case. The reduced emissions of ozone forming pollutants will reduce the risk of violating the national ozone standards. This lessens the possibility that some areas in Washington could be designated nonattainment for ozone by the Environmental Protection Agency. A designation of nonattainment would impose substantial costs on the start-up or expansion of industries with air emissions in such areas. The

reduction of cancer causing air toxics will reduce health impacts and medical costs to citizens of Washington, especially those with impaired cardio-pulmonary health. Reduction of greenhouse gases will help Washington avoid the potentially serious impacts of global warming, such as reduced snow pack, reduced summer water supplies, further impaired salmon runs, and reduced agricultural water supplies.

B. What is the adoption date and the effective date of this rule:

This rule was adopted on November 30, 2005. The effective date is December 31, 2005.

II. Differences Between Proposed and Final Rule

Ecology modified WAC 173-423-080(4)(c) as shown below. Additions to the text are shown in underline; deletions are shown in strike out.

Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

For model years 2009 through 2011 ~~2012~~ the Fleet Average Enforcement Report, if needed, must be submitted to the department of ecology by March 1, 2012 ~~2013~~. If Any debits are accrued in all three years, one year of debits accrued in model years 2009 through 2012 must be equalized by the end of the 2012 ~~2013~~ model year.

The change was made in response to manufacturers' comments that the proposed phase in would not allow them to integrate their product planning cycles in California with the start up of new requirements in Washington. Ecology agrees that the intent of the proposed rule was to avoid subjecting manufacturers to possible penalties in Washington due to inconsistencies between existing product planning cycles and the start up of the Washington rules. This change is consistent with the intent of the proposed rule language. The extent to which the effect of the changed provision differs from the proposed rule is not large or substantial. In particular, the revision shortens the phase in period and retains part of the original effects if manufacturers incur debits during the phase in.

III. Responsiveness Summary

Commentors have been assigned numbers, as indexed in the List of Commentors found in Appendix A. The first number in a bracket following the comment refers to the commentor quoted or paraphrased; additional numbers represent similar statements from other commentors.

A. Supportive comments:

1. Comment: We support these standards and wish for the state to pursue them. We believe it is imperative to reduce automobile emissions; protect public health; save money in fuel costs; reduce our dependence on foreign oil; and reduce our contributions to global warming. [3]

2. Comment: Thank you for adopting these regulations. They are a good idea, especially the greenhouse gas regulation. They improve our energy security, which is more important, I think, in the long run, in the next 50 years than even global warming. [11]

3. Comment: I support the Sierra Club and the Department of Ecology and I support this law 100%. I want to personally thank the gentlemen for their hard work to try to get this law implemented and, hopefully, Governor Christine Gregoire will sign it this December. [12]

4. Comment: I'd like to thank the Department of Ecology for prompt and effective implementation of the law passed by the legislature in the form of the rules subject to this comment process. [13]

5. Comment: I want Olympia to know how much I support such a measure. Thanks and keep up the good work in protecting the environment for our children. [4]

6. Comment: California led the way. Other states followed. Washington finally got on board to do something that benefits our health, our economy and the consumer who buys vehicles. Let's get behind this law and clean our air and help the environment. [14]

7. Comment: I want to encourage Ecology to move forward with adoption of the rule and encourage the governor to continue to work with our friends in Oregon. This will obviously be helpful for our dealers in Southwest Washington, but also extremely important for us adopting our laws here. [17, 24]

8. Comment: I was delighted to see this bill passed and it makes us one of the most progressive states in the nation who have gone beyond the federal clean air standards. I want to have the ability to buy a cleaner car and affect the overall air quality that we all breathe. [18]

9. Comment: I support clean car regulations and I support the strictest, quickest, widest-ranging regulations possible, based on sound science as advanced by groups such as the Union of Concerned Scientists and Washington Environmental Council. [23]

Response to comments 1 thru 9: Ecology thanks each of these commentators for their support.

10. Comment: Peter Orth represented the Sierra Club and expressed their strong support of Washington's clean car standards. The Sierra club played an active role in helping pass these standards in the 2005 legislative session and, "...urges the Washington State Department of Ecology to adopt strong Low Emission Vehicle regulations for the benefit of our public health, our air quality and the environment." [7, 24, 6, 13]

11. Comment: David Kircher, commenting on behalf of the Puget Sound Clean Air Agency (PSCAA), referred to their participation on Ecology's rule advisory committee and expressed their strong support of Ecology's adoption of more stringent motor vehicle emission standards. "These standards will help our region stay in attainment of the national ambient air quality standard for ozone and reduce emissions of toxic air pollutants." [6]

12. Comment: Senator Craig Pridemore commented on the pride and honor he felt as a sponsor of the clean car senate bill and for voting and speaking in favor of the bill on the senate floor. He expressed that these rules are extremely important and spoke in favor of the proposed rules implementing the California standards for auto emissions. [17]

Response to comments 10 thru 12: Ecology thanks each commentor for their support and acknowledges the important contribution each has made regarding the legislative debate of ESHB 1397 and the subsequent development of the rule. The legislature found motor vehicles are the largest source of air pollution in the State of Washington and that air pollution levels continue to harm public health, the environment and the economy.

13. Comment: Auto emissions are a substantial source of substances long proven to be harmful to human health and especially harmful to children, like mine. Reducing emissions further is in the interest of all of us, but not just for those concerned about the health of our families, but those also concerned about the troubling escalation in the cost of health care. [7]

14. Comment: Unchecked global warming is expected to adversely affect human health in a variety of ways including the spread of infectious diseases, increased smog and respiratory disease, heat stress and illness and injury related to extreme weather events. Because of these health benefits, and the significant consumer, environmental and economic benefits of cleaner cars and light trucks, the American Lung Association and Climate Solutions support the adoption of these new standards in Washington State. [9]

15. Comment: As I began my teaching career my annual list of students with health problems was short and dominated by allergy conditions. When I retired the list was maybe three times longer and asthma was the dominant condition. Diminished quality of air is the cause and that is unacceptable. [23]

Response to comments 13 thru 15: Ecology thanks each of the commentors for their support and intends to adopt the proposed rule by the end of this calendar year so that it will be enforceable with 2009 model year vehicles.

16. Comment: I can remember as a teenager driving over Snoqualmie Pass and seeing haze and having it actually burn my eyes because I wasn't used to it. That is not the case anymore. There's been a lot of work done in this area, and it's recognizable, and we're better off for it. I think that everything we can do to help the environment we are better off. [8]

17. Comment: New state clean car and light truck standards being considered would deliver a variety of health related benefits, including significant reductions in a variety of air toxic emissions including known and suspected carcinogens such as formaldehyde and benzene, a reduction in regulated pollutants such as carbon monoxide, nitrogen oxide and hydrocarbons that cause respiratory ailments and smog, major reductions in global warming pollution. [9]

18. Comment: Carbon dioxide is a poisonous chemical with harmful effects on the environment and the state should be well within its rights to regulate it as a form of pollution. [11]

19. Comment: Automobiles are the number one source of Washington's air pollution and automobile emissions are taking a toll on our health and our environment. Clean car standards will protect our public health, reduce global warming pollution, save fuel costs and provide consumers more clean car choices. The commentor points to the rise in asthma rates in Washington cities, the higher incidence of asthma in Seattle and Spokane compared to the national average and the American Lung Association's failing score for King County regarding levels of particulate matter pollution. [7, 14, 17]

Response to comments 16 thru 19: Ecology agrees. The goal of the proposed rule is to reduce automobile emissions for the protection of public health and the environment. See response to comments 20 thru 22.

20. Comment: The new clean car standards are expected to reduce global warming pollution from new cars by roughly 30% by 2016. Unchecked climate disruption is a major threat to Washington's economy and environment. Washington and Oregon's Cascade snowpack – which drives our power, water, agriculture, and habitat systems – is projected to decline by 59% by 2050 without swift action. [7]

21. Comment: It is essential that we regulate pollution from greenhouse gasses for our energy security, to limit catastrophic climate change, and to protect our way of life. [11]

22. Comment: One of the key benefits to cleaner cars/cleaner air law is that as citizens we will be helping to slow global warming. Scientific evidence strongly indicates that as a species, we are accelerating the warming of the atmosphere by adding significant quantities of carbon monoxide, nitrogen oxides, and hydrocarbons, much of it from autos and trucks. [14, 15, 17, 24, 6]

Response to comments 20 thru 22: The legislature determined that reductions in greenhouse gas emissions are necessary and that it is equitable to seek such reductions from transportation sources. The legislative debate included considerable discussion regarding the link between greenhouse gas emissions and global warming. Ecology believes the scientific consensus is that global warming is real, and human activities are mainly responsible.

23. Comment: One of the extremely important aspects of this bill is that it makes Washington more attractive for auto manufacturers to provide California vehicles. More and more states are adopting these standards, and as they do, the auto manufacturers are responding by producing these vehicles. [17]

24. Comment: The auto industry complains that clean cars reduce choice or force consumers to deal with uglier cars. Given that Honda is able to produce Accord and Civic hybrids that look identical to their gasoline-powered variants, it's hard to take this argument seriously. [11]

Response to comments 23 and 24: Ecology acknowledges the comments.

25. Comment: The global warming emission standards have substantial economic benefits to consumers by reducing fuel consumption. Clean car standards that begin with 2009 models will save more than \$2 billion in fuel costs for Washington state consumers by 2020. [7]

26. Comment: It is premature to assume that regulating carbon dioxide equates to mandating fuel efficiency standards in excess of federal CAFÉ standards. [11]

27. Comment: This is an opportunity for the auto industry, especially the struggling American manufacturers, to become leaders in the new energy economy. Increased fuel efficiency is absolutely essential for the survival of individual auto companies, our energy security and the sustainability of our way of life. [11]

28. Comment: Dirty air is not the only problem from cars that emit too much pollution and use too much fuel. The nation's dependence on oil and increases on demand creates chaos in the economy, foreign affairs and with the environment. [23, 11]

Response to comments 25 thru 28: The proposed standards are emission standards, not fuel economy standards. However, the use of advanced

technologies is expected to also decrease fuel consumption and operating expenses over the life of the vehicle.

29. Comment: Consumers have overwhelmingly supported clean car standards in Washington. Currently, U.S. auto companies are losing market share and profits to foreign competitors - like Toyota and Honda - that use better technologies and designs. Additionally, as gas prices hit record highs, consumers are shunning gas guzzling pickups and SUVs. The clean car efforts underway in Washington, Oregon, California, the Northeastern states, and Canada are a boon for automakers - forcing them to make the hot selling hybrids and offer a wide range of clean car vehicles that consumers want. [7, 11]

30. Comment: Currently 26% of the new cars sold in America will have to meet California's emission standards. With the addition of a few more states, the auto industry may be able to save money through economies of scale by producing all of their cars to meet California standards. [11]

Response to comments 29 and 30: Ecology acknowledges the comment.

31. Comment: Air pollution is fast becoming a major problem in U.S. cities, and automobiles and truck traffic are the number one source of Washington's air pollution. [14]

32. Comment: I support densification of population and efforts to prevent urban sprawl which makes the air pollution situation much more significant as population compresses. We want to make sure people can live comfortably under denser conditions. [15]

33. Comment: In spite of today's cleaner vehicle fleet, when compared to that of several decades ago, we continue to see elevated levels of combustion related pollutants close to major highways. These pollutants disperse with distance from the roadways which illustrate the importance of these rules in terms of reducing the impacts of these pollutants on populations that live in close proximity. [13]

Response to comments 31 thru 33: Ecology agrees. The legislature determined that motor vehicles are the number one source of air pollution in the state of Washington and that air pollution levels continue to harm public health, the environment and the economy.

B. Critical comments:

1. General and editorial:

34. Comment: Unless you force removal from our roads of older cars that pollute the legislation is really only feel good. [2]

Response: Ecology disagrees. Older cars are still addressed under Washington’s inspection and maintenance program which continues until 2020. The legislature adopted the clean car standards for passenger cars, light duty trucks and medium duty passenger vehicles beginning with the 2009 model year. The proposed rule fulfills the intent of the legislature.

35. Comment: Although I value clean air, I am concerned that these proposed strict rules will have adverse impact on me, as a car owner and citizen of Eastern Washington. The commentor expresses general support for clean car regulations on new vehicles and in large metropolitan cities. They express concern that soon these requirements will apply to older vehicles and less populated areas and that they will involve future emission tests.

The commentor urges that the regulations apply only to metropolitan cities and counties in Washington that have problems with congestion, traffic and more people. [5]

Response: The Washington State Legislature adopted the California auto emission standards for the entire state and directed Ecology to develop rules to implement them. Ecology does not have discretion to limit the areas to which the rule applies. The rule applies to new vehicles beginning with the 2009 model year and the legislature eliminated future emission testing for these cars. The legislature eliminated the inspection and maintenance program for all cars starting in 2020.

36. Comment: Oregon Department of Environmental Quality (DEQ) comments that they too are adopting California motor vehicle regulations, in response to a coordinated effort of the three West Coast governors to act regionally to reduce greenhouse gas emissions. “Each of our states determined that opting in to California’s vehicle standards is one of the most significant and cost effective measures available.” They point to the importance of acting jointly in order to increase the efficiency of each state’s requirements.

Accordingly, DEQ suggests that WAC 173-423-020, 173-423-050(1), and 173-423-060 be modified such that only California certified vehicles are sold for use in Washington, “...or for use in any other state subject to California’s vehicle emission standards.” [16]

Response: Ecology acknowledges the connection between Washington and Oregon in terms of adopting clean car standards. Consistency between the two states is important and Ecology supports Oregon in this regard.

Ecology expects to further develop implementing policy and procedures in consultation with the Department of Licensing (DOL) and other stakeholders. The process may involve further rule development and Ecology will consider

Oregon's suggestion at that time. Ecology looks forward to Oregon participating in the process.

37. Comment: The following is a list of changes and corrections that make the Washington regulation consistent with the California regulation. [10, 20, 21, 22]

- Section 173-423-040(4): Revise as follows, "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle."
- Section 173-423-090(5): Change "1961.1(e)(2)(a)" to "1961.1(a)(1)(B)2.a"
- Section 173-423-090(5): Change "1961.1(e)(2)(a)(i)" to "1961.1(a)(1)(B)2.a.i"

Response: Ecology will make the recommended changes to the proposed rule.

2. Comments addressing specific provisions of the proposed rule:

a. LEV II comments:

38. Comment: Adopting and attempting to enforce the California fleet NMOG average in Washington could violate the Clean Air Act on both an ongoing and transitional basis.

Section 177 of the Clean Air Act, states, "nothing in this Act shall be construed as authorizing any such state to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards.

Regarding the ongoing issue, a manufacturer's fleet NMOG average in Washington will not be the same as in California – it may be higher or lower. A manufacturer that has a higher fleet average NMOG in Washington may be forced to limit sales of California certified cars in Washington in order to comply with the Washington fleet average, while no such limit is imposed in California.

To address this issue, the Alliance recommends that Washington require fleet NMOG reporting only. Reporting is likely to show that the fleet average in Washington is at or below the standard and about the same as the NMOG average in California on an industry-wide basis. [10, 20, 21, 22]

Response: Ecology does not believe that adopting and enforcing the fleet average NMOG violates the Clean Air Act. Ecology reviewed the analysis of Air Improvement Resources, Inc. which the commentor included as Appendix F. Ecology acknowledges the apparent similarity of certain standards in the California LEV program and the federal Tier II program. This apparent similarity emphasizes the importance of the benefit achieved by including the fleet NMOG average.

Moreover, Ecology believes that requiring the fleet NMOG average, as opposed to simply NMOG reporting fulfills the intent of the legislature to protect public health and the environment.

Ecology questions the overall importance of the issue given the commentor's recognition that reporting would likely show the fleet average in Washington is at or below the standard and about the same as the NMOG in California.

39. Comment: In terms of the transitional period, California allows manufacturers to earn credits in one year and debits in the next. If Washington regulations take effect in 2009, an automaker could have earned substantial credits in California in 2006 through 2008. The manufacturer would use those credits in 2009, 2010 and 2011 in California to offset debits in those years. As the Washington regulation is currently written, that same manufacturer selling the exact same fleet of vehicles in Washington would have substantial debits and could be forced to limit the sale of some California certified cars. This would clearly violate the Clean Air Act.

Washington can avoid the transitional issue by adopting a requirement to only report fleet NMOG as suggested earlier. Otherwise the Alliance recommends that Washington take the same approach as other California states have taken which is to defer compliance with the fleet NMOG requirement until the transitional period is over. [10, 20, 21, 22]

Response: Ecology acknowledges the concern over transitional effects and appreciates the extensive dialogue on the issue with the Alliance on behalf of the manufactures. From the beginning of rule development, Ecology has addressed the phase in issue with two primary goals in mind:

- provide a reasonable and workable phase in for manufacturers
- maintain some level of a meaningful system of debits

Ecology has slightly modified the proposed rule in a way the agency believes accomplishes the goals while at the same time address the manufacturers concern. In general, both credits and debits are earned in the phase in period. Earned credits may be used, at the manufacturer's discretion, to offset any accrued debits. Credits not used will be discounted; up to two years of debits incurred due to prior product planning cycles based on California debit and credit balances may be retired.

40. Comment: In the Alliance comments regarding Washington's Inspection and Maintenance program, they assert that, "Ozone-precursor emissions from gross polluting vehicles overwhelm emissions from the vehicle fleet as a whole", and that, "These vehicles...produce up to 50 percent of the total emissions from the vehicle fleet." The Alliance concludes that "...detecting and eliminating emissions from these vehicles provides far more emission benefits than the

miniscule difference between the LEV II and Tier 2 emission standards for new vehicles.” [10, 20, 21, 22]

Response: Older gross polluting vehicles, typically associated with earlier generations of less stringent vehicle emission standards and technologies, do account for much of the pollution from motor vehicles. Those vehicles have been addressed in Washington by the emission inspection program. The legislature did not sunset the I/M program until 2020 so these older vehicles built to less stringent standards will continue to be addressed by I/M for a long time. Newer vehicles are built to longer warranty standards and the combustion and emission control technologies are generally longer lived. As discussed in the response to comment 41 and 42, Ecology disagrees that the benefits associated with California standards is "miniscule". In any event, the legislative decision to end the inspection program in 2020 will not reduce the benefits associated with California standards until far in the future after the older technology vehicles are retired. Also, the legislative decision was based largely on the inconvenience of the inspection program and was not premised on an analysis of the benefits with and without the I/M program.

41. Comment: The LEV II regulations do not provide any meaningful benefits in ozone precursor emissions relative to the Federal Tier 2 regulations. Both LEV II and Tier 2 vehicles are far cleaner than the average vehicles on Washington’s roads today, and emissions of the on-road fleet will come down dramatically as the fleet turns over. Furthermore, the additional benefits from the California LEV program are very small as shown in Appendix F of the Alliance comments, in a study by Air Improvement Resources, Inc. [20]

42. Comment: The Association of International Automobile Manufacturers commented that adopting the California LEV II standards will provide no significant reduction of ozone precursors in the state of Washington.

In support of this position, the commentor references a 2003 report by NESCAUM (Northeast States Coordinated Air Use Management), a critical assessment of the report conducted by the U.S. Environmental Protection Agency and NESCAUM’s re-evaluation of its 2003 analysis. The commentor states that, “The new NESCAUM analysis predicts only a 3 percent emissions benefit for HC emissions and nitrogen oxide emissions for the California LEV II program versus the federal Tier 2 program.” [19, 10, 20, 21, 22]

Response to comments 41 and 42: The comments argue that there is no significant reduction of ozone precursors or ozone and hence no corollary benefits. In the cost benefit analysis which analyzed the effects of the rule, no benefit was assigned to ozone reductions and Ecology did not rely on benefits from ozone reduction to show that benefits of the rule exceeded the costs.

Ecology does discuss those benefits in a qualitative sense. However, we make

no estimate of the extent of ozone reductions that might result from this level of precursor reductions and do not analyze the benefit of reduced adverse health effects that might result from lower levels of ozone. Ecology concludes that the benefits of reduced operational costs from the greenhouse gas regulations “alone substantially exceed all costs of the regulation”. Ecology did provide the legislature an analysis that showed a reduction of HC and NOx that ranged from 8 to 11%. In that analysis Ecology did take account of the EPA criticisms of the original NESCAUM study. In particular, based on the EPA criticisms, Ecology estimated a range of benefits based on two different assumptions about manufacturer compliance strategies, assumed that evaporative emissions would be the same for both federal and California vehicles, and stated emission reductions in terms of the entire fleet, not just the light duty fleet. Ecology believes this estimate of benefits is correct and this level of benefits would be difficult to achieve with any other ozone precursor reduction strategy. However in developing this rule as directed by the legislature, Ecology did not rely on any estimate of health benefits due to reduced emissions of ozone precursors and reduced levels ozone. Also, the basic decision that these benefits are important and necessary in Washington was made by the legislature and is not being made in these regulations.

Finally, Ecology acknowledges that Tier 2 vehicles are substantially cleaner than previous generations of federal requirements and that the limits in the various federal bins are closer to California standards than ever before as shown by the NESCAUM paper submitted by AIAM. However, as Ecology pointed out in its public hearings materials, the result of the different federal and California approaches to the fleet average result in significant differences in overall fleet emissions.

b. Greenhouse gas comments:

43. Comment: Exposure to carbon dioxide is not harmful to human health at concentrations found in the ambient air, and EPA has established no NAAQS for carbon dioxide. [10, 20, 21, 22]

Response: Although these statements are true, the concern with carbon dioxide is not its direct health effect but the fact that it causes global warming. See response to comment(s) 44 thru 46.

44. Comment: There cannot be an attribution of any significant reduction in global warming, or any other discrete impact on climate, to the implementation of the California greenhouse gas rule in Washington. If the Department believes that there is any evidence of a positive impact on climate or ozone levels, it should identify that evidence. [10, 20, 21, 22]

45. Comment: Any theoretical change in temperatures that a rule of this nature could produce, would in turn, have no measurable effect on ozone levels in Washington. [10, 20, 21,22]

46. Comment: The proposed regulation would have no measurable impact on the global climate or the climate of Washington State or on the public health concerns and issues described in the rulemaking proposal. [22]

Response to Comments 44 thru 46: Washington does not rely on claims of reductions of ambient temperature reduction or temperature driven ozone levels to support this rulemaking. The legislative debate included considerable discussion regarding the link between greenhouse gas emissions and global warming. The legislature concluded that reductions in greenhouse gas emissions are necessary and that it is equitable to seek such reductions from the transportation sector. While adoption of this rule in Washington is not sufficient to reverse global warming worldwide, actions of this type are necessary to mitigate the adverse affects of global warming. The legislature anticipates other actions being taken both nationally and internationally to address climate change and took action within its authority to protect public health and the environment from detrimental pollutants.

47. Comment: CARB has assumed that once its greenhouse gas rule is implemented, the automobile industry will choose to deploy the technologies needed to meet the standards on at least a nationwide basis. Because the costs of new regulations are important in Washington, Ecology needs to make an independent assessment of CARB's assumption. [10, 20, 21, 22]

Response: This comment was made to California and CARB rejected the charge. CARB states that their analysis and rulemaking "is *not* based an assumption that greenhouse gas technologies would migrate to vehicles nationwide... [CARB] staff expects that, in addition to the 1.7 million affected vehicles sold annually in California, ... voluntary agreements and regulations already in force in Canada, Europe and Japan, as well as adoption of California's greenhouse gas requirements by states in the northeast and elsewhere, will provide plenty of demand for high volume production of greenhouse gas reduction technologies anticipated in the ISOR."

Commentors suggested that Ecology should conduct an independent analysis from CARB. There is no reason to believe that Ecology could do a better analysis than CARB or that an Ecology analysis would reach any different conclusions. Ecology finds that CARB has historically been very thorough and accurate in their assessment, that within a few years of CARB's adoption of standards EPA usually adopts similar requirements, and that retrospective studies of estimated costs have shown that CARB is very reasonable in its assessments.

48. Comment: The proposed regulations impose significant costs on society, particularly consumers, dealers, and manufacturers, with no measurable positive impact on air quality, health issues, or global climate change. [21]

49. Comment: This regulation will impose substantial costs on Washington consumers that far exceed any perceived benefits, and will not improve the quality of the environment in Washington or elsewhere. [20]

50. Comment: CARB has recognized that the greenhouse gas rule will raise new-vehicle costs and prices, and so will reduce demand for new vehicles. It would be illogical and contrary to their customers' interests for manufacturers to produce vehicles for which there is less demand. It is unlikely that the industry will try to comply with the California greenhouse gas rule by producing all or even most of the necessary technologies at nationwide volumes. This means the cost of the regulation for Washington consumers will be substantially higher than estimated by CARB. [10, 20, 21, 22]

51. Comment: In Appendices C and D, the Alliance and other manufacturers provided the Sierra Research and NERA analysis of CARB greenhouse gas regulations which provided the basis for most of the cost arguments. In Appendix C, the studies argue:

- § The increased prices of vehicles will decrease sales of new vehicles, increase the proportion of older vehicles in the fleet and thereby increase emissions of ozone causing pollutants.
- § The effect of increased vehicle prices, fuel economy, reduced sales and changes in the mix of vehicles available will substantially reduce consumer welfare. This is essentially the same argument presented by other studies in Appendix A.
- § There would be fewer jobs resulting in California as a result of the regulations.
- § There would be reduced sales and income taxes in California.

In Appendix D, Sierra presented 13 adverse effects and/or deficiencies in the CARB proposals and analysis. These defects ranged from an inflated estimate of baseline (no regulation) costs, the amount of mark-up taken by vendors to the automotive manufacturers, omissions of sales tax costs in CARB estimates, inflated estimates of vehicle service life, the "rebound" effect, and failure to account for the effect of 2007 CAFÉ standards on the baseline. [10, 20, 21, 22]

Response to comments 48 - 51: California had the benefit of these comments when it finalized its greenhouse gas rules. CARB concluded that the "rebound effect" of decreased sales, more older vehicles and more emissions would be minor and would not change their analysis that benefits exceed the costs. Ecology agrees with the California analysis. We have responded to the reduced consumer "opportunity cost" arguments in responses to comment 52. Regarding jobs, California concluded that there would be an increase in jobs due to the fact that money previously spent by consumers on gasoline would circulate longer

within the California economy and would, as a result, increase California jobs. Ecology believes this is a reasonable analysis and has estimated positive job effects in Washington. Tax effects were considered during the legislative hearings after which the legislature directed Ecology to implement the California standards. The legislature did not conclude that tax effects in Washington outweighed the benefits of instituting this program.

The effect of most of these comments in Appendix D was that California had overestimated benefits and underestimated costs. In CARB's Final Statement of Reasons, they did acknowledge a number of these comments and changed their estimates to reflect them. The lifetime benefit of operational savings attributed to the rule was reduced from \$3,000 to \$2,500 and the costs were raised as follows: PC/LT1 in 2016 went from \$965 to \$1,064; LT2 costs in 2016 went from \$626 to \$1,029. CARB did not agree that the magnitude of the issues raised by Sierra and NERA were sufficient to reverse the positive net benefits of the rule. Ecology agrees with CARB. Washington's Cost Benefit Analysis demonstrates the benefits exceed the costs, as well. Also see response to comments 53 and 54 regarding the assumptions behind the Sierra cost arguments.

52. Comment: In addition to the previous cost arguments, the Alliance included Appendix A which provides three studies, the main thrust of which is that the CARB economic analysis of the greenhouse gas standards "ignored the opportunity costs of a mandated increase in fuel economy standards" and thereby understates the costs of the regulation. They assert that "From the perspective of many consumers, the total costs of compliance ... will include the lost opportunity to purchase a vehicle which may be less fuel efficient but has other features that a consumer desires more than enhanced fuel efficiency." The studies provided are:

- § The Economic Costs of Fuel Economy Standards Versus a Gasoline Tax by the Congressional Budget Office, December 2003.
- § The Economics of Fuel Economy Standards by Portney, Parry, Gruenspecht, and Harrington prepared for Resources for the Future, November 2003.
- § Impacts of Long-Range Increases in the Fuel Economy (CAFÉ) Standards by Kleit in Economic Inquiry, April 2004.
- § Do Regulations Requiring Light Trucks to Be More Fuel Efficient Make Economic Sense for the AEI-Brookings Joint Center for Regulatory Studies by Lutter and Kravitz, February 2003.

The Alliance states that the CBO study indicated it was necessary to consider that higher vehicle prices associated with CAFÉ standards would result in a loss of well being for consumers who would not purchase new vehicles at the higher prices. They also concluded that a 46 cent per gallon gasoline tax would achieve a 10% reduction in fuel use at a lower cost than increased CAFÉ standards due in large part to the immediacy of the effect of a gasoline tax in inducing a shift in consumption patterns.

The second study primarily examines the opportunity cost of consumers having vehicles that would have greater fuel efficiency instead of more performance, weight and towing capacity and “other vehicle attributes” that consumers might prefer. They indicate that typical engineering studies underestimate this cost and consideration of them would make costs exceed the benefits. They also note the “rebound effect” of better mileage resulting in greater travel and hence greater pollution.

The Alliance characterizes the next two studies as making the same points. [10, 20, 21, 22]

Response to comments 52: The Ecology cost benefit analysis quantified the direct costs and benefits of the regulation which are mainly the increased costs of vehicles and the increased fuel savings associated with vehicles that produce less greenhouse gases. Ecology closely followed the CARB analysis of these direct costs and benefits. CARB considered the turnover and rebound effect and concluded that the magnitude would be minor. Ecology agrees. The significance of the opportunity cost experienced by some consumers that might have preferred more performance, power, or towing capacity was not considered in part because CARB designed its requirements to preserve existing levels of performance such as towing capacity, power, safety and acceleration so there is no lost opportunity. CARB consultants were experienced in the automotive industry and used the same kind of computer modeling commonly used by manufacturers in designing cars. CARB analysis also indicates that the direct benefits to consumers in fuel savings will serve to minimize the impact of reduced vehicle purchases due to increased vehicle prices and hence the opportunity costs cited, i.e. sales and “welfare” decreases, will be minimal.

53. Comment: The California greenhouse gas rule as proposed for adoption by DOE will severely limit the product line that General Motors will be able to provide to its independent dealers in Washington, both in the initial years of the rule and in later years. [20]

54. Comment: California’s greenhouse gas rule makes no realistic provision for continued availability of commercial vehicles – vehicles that are essential for Washington businesses and the health and competitiveness of the Washington economy. [20]

55. Comment: A system aimed at increasing each manufacturer’s corporate average fuel economy, such as this proposal, puts a disproportionate burden on full line manufacturers and manufacturers of specialized vehicles, such as medium duty passenger vehicles, work vehicles and performance vehicles. Manufacturers will be eventually forced to limit the availability of certain vehicles, which will harm Washington’s dealers and reduce consumer choice. [21]

56. Comment: The proposed regulation sets fuel economy levels that cannot be achieved using technology in the time periods required, without significant reductions in product offerings for Washington state consumers. The customers of full line manufacturers like DaimlerChrysler, whose market mix is focused towards larger vehicles, would be the most negatively affected by the proposed rule. [22]

Response to comments 53 and 56: CARB also considered these comments. CARB analyzed an extensive range of vehicle classes and models in order to demonstrate that the greenhouse gas requirements were both technically feasible and cost-effective. The computer modeling used in CARB's technology assessments was set to preserve the existing levels of performance so only those technologies that did not reduce vehicle performance characteristics were projected to be used to meet the standards. Consequently, Ecology agrees with CARB's assessment that "Restricting model availability in a highly competitive market when cost-effective approaches are available doesn't make economic sense."

The assertion about lack of availability of vehicles is also premised on a Sierra Research analysis that used very different assumptions about the feasibility of meeting the standards. CARB characterized the Sierra assumptions as "unrealistic and based on selective data sources". Ecology believes that CARB has historically done a very good job of analyzing the feasibility of its standards and that CARB had a legislative mandate on "feasibility" that made sure their analysis was realistic and would not result in manufacturer's being unable to produce certain kinds of vehicles. In addition, the AB 1493 specifically exempted "work trucks" from the requirements so the larger pick up trucks commonly used by contractors and commercial enterprises are not affected by the GHG regulations.

57. Comment: Product restrictions and higher vehicle prices will lead to large U.S. employment losses. [20]

58. Comment: Daimler Chrysler submitted a study by Harbour Consulting which concluded the proposed rule would significantly reduce employment in the automobile industry nationwide at manufacturing, supplier and distribution facilities because it would be cost prohibitive to produce numerous models currently available once the regulation is fully implemented. DaimlerChrysler has 68 dealers and 248 suppliers in Washington State. [22]

Response to comments 57 and 58: Regarding the effect on jobs within Washington, California concluded that there would be an increase in jobs due to the fact that money previously spent by consumers on gasoline would circulate longer within the California economy and would, as a result, increase California jobs. Ecology believes this is a reasonable analysis and has estimated positive job effects in Washington.

The loss of jobs in the automotive industry is a serious concern. However, this estimate of lost jobs in the industry is premised on Sierra Research analysis that used very different assumptions about the feasibility of meeting the standards. The Harbour Consulting study that predicted large job losses was based on the assumption that a large number of models would not be made for sale in California, and this analysis was based on the Sierra assumptions of what would be required to comply with the standards. CARB characterized the Sierra assumptions as “unrealistic and based on selective data sources” and consequently rejected the conclusion about lost jobs. Ecology agrees with the CARB analysis.

c. Comments regarding reports required only in Washington:

59. Comment: Whenever a state adopts specific reporting requirements that differ from California and other states, it increases the complexity to a manufacturer that must comply with regulations in all 50 states. Washington’s regulations contain two such provisions.

WAC 173-423-100, paragraph (3) requires that automakers, upon request, report the vehicle identification number (or VIN) for all federal vehicles that a manufacturer delivers to Washington. The Alliance does not believe that this will prove to be an effective enforcement tool and not a single other state has adopted this requirement or anything like it. Nonetheless, we appreciate that Ecology Staff agreed to request this, since the request provides a reminder to the automakers and will allow the Department of Ecology to discontinue making these requests without going through rulemaking if it decides that the information is of little or no value. [10, 20, 21, 22]

Response: Ecology appreciates the dialog on this issue with the Alliance in the rule development process and acknowledges the reports may ultimately not provide the intended benefits. In that event, Ecology may discontinue making these requests without going through the rulemaking process.

60. Comment: WAC 173-423-100, paragraph (2) contains another Washington-specific requirement to provide a list of all medium-duty passenger vehicles and medium-duty vehicles that the automaker will deliver to Washington dealers in the upcoming model year.

The Alliance requests the Department of Ecology revise this requirement to request this information each year from the automakers (i.e., “Upon request, Commencing with the 2009 model year...”). [10, 20, 21, 22]

61. Comment: The Alliance also suggests that the information provided by manufacturers be limited to medium-duty passenger vehicles (MDPVs), and not include medium-duty vehicles. By providing MDPVs, the Department will know

which models over 8500 lbs are subject to the California requirements (i.e., the list of MDPVs) and which models are not subject to the California requirements (i.e., any vehicle over 8500 lbs GVWR that is not on the MDPV list. [10, 20, 21, 22]

Response to comments 60 and 61: Licensing agents and subagents have expressed concern with simplifying and streamlining the intersection between the proposed rule and the impact on the licensing process. Having complete information as proposed may be needed for this purpose. Ecology acknowledges that both reports may not be needed to accomplish this goal.

For this reason, Ecology has modified the rule to make this requirement due “upon request”. In the event one or both of the reports are not needed, Ecology may discontinue making these requests without further rulemaking.

C. Other comments:

1. General comments:

62. Comment: I have no problem with tighter clean air standards, but I have some supplemental suggestions that can be pursued this session. The commentor provides suggestions to encourage people to buy cars already manufactured to meet California's emissions standards and for a technical support program to assist the public with maintenance of older cars. [1]

Response: Ecology thanks the commentor for the suggestions. The legislature, too, has considered incentives for purchasing cleaner cars. Under Senate Bill 5916 hybrid vehicles with an EPA highway mileage rating over 40 mpg are exempt from the retail sales and use taxes. It also exempts 100% alternative fueled vehicles that meet CA emission standards from this tax. The exemption is good for two years. It takes effect January 1, 2009 and expires January 1, 2011.

The inspection and maintenance program will remain in place through 2020, as determined by the legislature in ESHB 1397.

63. Comment: General Motors supports voluntary, consumer-oriented programs intended to address the issue of greenhouse gases, but not regulatory programs like that adopted by California, which will conflict with federal regulations. As an example, the commentor further describes a memorandum of understanding between General Motors and other companies in the Canadian automobile industry intended to reduce greenhouse gas emissions in the auto sector. [20]

Response: The Washington State Legislature chose to establish a mandatory auto emission reductions program by passing ESHB 1397 which adopts the California emissions standards for passenger cars, light duty trucks and medium

duty passenger vehicles. Chapter 173-423 Low Emission Vehicles fulfills this intent of the legislature.

64. Comment: Thank you for not blindly embracing hydrogen fuel cells. There are many technological problems with them such as limits to the amount of platinum available on earth and the production of hydrogen. [11]

65. Comment: I encourage Ecology to consider exploring the possibility of extending these regulations to diesel emissions for trucks and ships. I would also ask that you would try to exclude farm vehicles so we do not add additional burden to farmers. [11]

Response to comments 64 and 65: The legislature adopted the California emissions standards for passenger cars, light duty trucks and medium duty passenger vehicles. The rule does extend to vehicles propelled by diesel engines that fall within these classifications. The legislature specifically did not adopt the Zero Emission Vehicle (ZEV) standards and ships were not considered by the legislation.

The legislative debate included considerable discussion regarding heavy duty trucks regularly associated with farming operations. The proposed rule does not apply to heavy duty trucks or to larger trucks typically used by farmers or contractors.

66. Comment: Regarding the small business effects, I would say that you've probably minimized the impact to licensing agents and sub-agents. We think the impact at the counter will be much more than you realize.

In support of this position, the commentor expresses the importance of considering the cumulative effect of various steps, processes and programs linked to vehicle registration. Examples include the organ donor program, the address verification program, the new driver's license verification bill, the new transportation weight-based fee bill, and the proposed child support enforcement program.

The commentor expresses that these are all good ideas, as is the clean car rule. It's the broader context and the cumulative affects of additional paper work at the licensing counter that is of concern.

The commentor formally requests that the Auditor's Association be given the opportunity to comment on implementing the new rule and that implementation be minimized and streamlined as much as possible.

The commentor references Ecology's anticipation of utilizing DOL data bases to guide compliance and enforcement and poses the following question. Is it your

feeling that the Department of Licensing may need additional dollars to do programming or informational technologies to help? [8]

Response: Ecology acknowledges the commentor's concern. Ecology expects to further develop implementing policy and procedures in consultation with the Department of Licensing (DOL) and other stakeholders. The process may involve further rule development and Ecology expects to further consider this issue at that time. Ecology looks forward to licensing agents and subagents participating in the process.

In response to this comment, Ecology had a brief discussion with DOL regarding additional costs for reports from the DOL database to guide enforcement and compliance. DOL suggests that any additional costs would be minimal.

67. Comment: The available evidence indicates that grid-connected hybrid vehicles will be commercially infeasible for anything other than niche markets that receive substantial public subsidies. [10, 20, 21, 22]

Response: WAC 173-423 Low Emission Vehicles is not based on any assumptions about sales of grid-connected hybrid vehicles. The legislature did not adopt the ZEV provision of the California standards so in terms of the proposed rule and complying with the fleet average, ZEVs (and their substitute PZEVs) do not play a role.

68. Comment: I request the Department of Ecology provide estimates of the amount of money the clean car law will save consumers assuming the U.S. adopts the Kyoto protocol. [11]

69. Comment: I request the Department of Ecology provide estimates on the impact of California emission standards and their effect on one-quarter of the U.S. fleet in terms of reducing demand, and therefore, price, of oil. [11]

70. Comment: I request that the Department of Ecology comment on alternative methods for reducing carbon emissions. [11]

71. Comment: I request that the Department of Ecology prepare estimates for tax incentives and/or credits that would create the same effect in the marketplace as the clean car law. [11]

72. Comment: Three percent is the maximum reduction in carbon dioxide equivalent greenhouse gas emissions that can be accomplished without improving fuel economy. The CARB standards require a reduction of carbon dioxide-equivalent emissions from passenger cars of more than thirty percent. For typical gasoline-powered vehicles, it will therefore be impossible to meet the CARB regulation without reliance on higher fuel economy. [10, 20, 21, 22]

Response to comments 68 thru 72: The proposed standards are emission standards, not fuel economy standards. However, the use of advanced technologies is expected to also decrease fuel consumption and operating expenses over the life of the vehicle. See response to comments 79 through 82.

73. Comment: The ARB created an approach for testing selected test vehicles for determining the carbon dioxide equivalent emissions fleet average that is based on testing worst-case vehicle configurations. To achieve a carbon dioxide equivalent emissions fleet average representative of the true average, a manufacturer would need to test all vehicle configurations. [20]

74. Comment: The Alliance questions the assumption that inter-manufacturer credit provisions and alternative compliance features of the California rule will play a significant role in compliance with the regulation, either in California or Washington. [10, 20, 21, 22]

Response to comments 73 and 74: The intent of the alternative compliance program is to provide maximum flexibility to manufacturers, while improving vehicles through the use of advanced technology. It allows manufacturers to average emissions across their entire vehicle mix, aggregate the greenhouse gas pollutants into equivalent emissions, and bank and trade excess emission credits between vehicle classes and manufacturers.

75. Comment: The motor vehicle greenhouse gas rule would also compromise traffic safety, if one accepts CARB's premise that the California rule would result in nationwide deployment of vehicles designed to comply with the California standards. On that assumption the least-costly compliance strategies for the California rule will include significant reductions in the weight of new vehicles. Reductions in vehicle weight have in the past been shown to reduce vehicle crashworthiness. These comments were supported by a study by William Wecker and Associates which estimated that there would be increased fatalities and serious injuries due to the GHG standards. See response to comment 47. [10, 20, 21, 22]

Response: Weight reduction and vehicle downsizing are not required by this regulation. Ecology anticipates that manufacturers will incorporate technology that currently exists in order to achieve compliance with the standards.

California's AB 1493 rule makes it clear that technologies to reduce green house gas emissions do not necessarily compromise desirable features such as performance, comfort, etc. Many of the technologies discussed are currently in use by manufacturers. The flexibility provided by the regulation will enable manufacturers to continue to offer their current mix of vehicles. It is anticipated that manufacturers will be able to achieve compliance while maintaining, or improving upon vehicle performance levels demanded by consumers. However,

if a manufacturer does choose to reduce vehicle weight, their vehicles are still required to meet federal safety standards.

2. Legal comments:

Caveat: A number of comments addressed below challenge the legality of Ecology's rule that adopts the California motor vehicle emission standards. Many of these comments mirror legal arguments made to the California Air Resources Board (CARB) upon its adoption of California's greenhouse gas standards and in the current lawsuits that challenge California's greenhouse gas rule in California. Ecology believes that its rule is valid and legally defensible under applicable law and because the Washington legislature adopted the emission standards this year and directed Ecology to adopt these rules to implement the standards.

The commentors do not offer any alternative language to Ecology's proposed rule. In addition, because the comments are legal arguments, Ecology does not believe it is required to respond at this time. However, in the interest of open government, Ecology offers its brief view of the legal aspects of the rules. These responses are incomplete and not binding on Ecology. Ecology reserves any and all rights to advance any legal arguments whatsoever in the future in addition to those offered below.

76. **Comment:** Washington is not required to take California's greenhouse gas program. [21]

Response: The legislature enacted a law that adopted California's greenhouse gas standards as permitted under the federal Clean Air Act and specifically directed Ecology to adopt regulations requiring that vehicles be certified to the California carbon dioxide equivalent emission standards. In addition, Ecology believes compliance with California's greenhouse gas standards involves core engine, transmission and air conditioning technologies that could not be omitted from a vehicle without creating a third car.

77. **Comment:** California's greenhouse gas emissions standards are preempted by section 209(a) of the Clean Air Act. While California can seek a waiver of federal preemption for some types of standards, its standards must be consistent with federal standards, and EPA has determined that the Clean Air Act does not permit federal regulation of motor vehicle greenhouse gases. Therefore, California lacks the authority to adopt and enforce its own greenhouse gas regulation and no other state can opt in to such standards. Washington is not compelled by the Clean Air Act to adopt the California regulation and could not, in any event, enforce the fleet average contained in the new regulation. [10, 20, 21, 22]

78. **Comment:** Washington's proposed rule does not meet the requirements of

section 177 of the Clean Air Act which states that eligible states may only adopt “California standards for which a waiver has been granted” by EPA under section 209 of the CAA. At this time, EPA has not granted or even considered a section 209 waiver for California’s greenhouse gas emission standards, and California has not yet requested such a waiver. [19]

Response to comments 77 and 78: Ecology does not respond to the commentor’s characterization of any position EPA may have taken with respect to the legality of the California greenhouse gas standards. Ecology disagrees that Washington can not adopt the California standards under the waiver provisions of Section 209. Washington believes it may adopt California’s greenhouse gas emission standards prior to the time that EPA grants a waiver and still meet the requirements of section 177.

Section 177 states that eligible states may only “adopt and enforce . . . California standards for which a waiver has been granted” by EPA under section 209. 42 U.S.C. § 7507. At least one federal court of appeals has held that, “the waiver is a precondition to *enforcement* of the standard that has been adopted. (Emphasis added) *Motor Vehicles Mfrs Ass’n v. New York State Dept. of Env’tl. Conservation*, 17 F.3d 521, 534 (2d Cir. 1994). Accordingly, a state may adopt California’s emission standards before EPA grants a waiver, “so long as [the state] makes no attempt to enforce the plan prior to the time when the waiver is actually obtained.” *Id.*

79. Comment: California’s greenhouse gas emissions standards are preempted by the Energy Policy and Conservation Act (EPCA) and the comprehensive federal regulatory program governing motor vehicle fuel economy. Regulation of motor vehicle carbon dioxide is inextricably related to motor vehicle fuel economy and the corporate average fuel economy (CAFE) standards set by the National Highway Traffic Safety Administration under EPCA. [10, 20, 21, 22]

80. Comment: In the case of motor vehicles, carbon dioxide emissions are directly related to fuel consumption. The only method for significantly reducing carbon dioxide emissions from a gasoline-powered motor vehicle is to reduce fuel consumption. [10, 20, 21, 22]

81. Comment: State standards for greenhouse gas emissions from motor vehicles are *de facto* fuel economy standards for vehicles, which are preempted by federal fuel economy laws and regulations. [19, 20, 21, 22, 10]

82. Comment: The matter of California’s greenhouse gas emission standards and federal preemption is currently being considered by the U.S. District Court in ongoing litigation. Other states would be well-advised to postpone any actions to adopt the California greenhouse gas emission standards until this litigation is resolved. [19]

Response to comments 79 thru 82: Ecology has reviewed CARB's Final Statement of Reason in response to similar comments it received during rulemaking and agrees with its response. This is not a fuel economy regulation. The regulation is intended to reduce all climate changing emissions including tailpipe carbon dioxide and air conditioning refrigerant emissions, as well as nitrous oxide, and methane. The engine improvements required by this regulation are consistent with those required to comply with earlier California standards which have not been preempted by federal fuel economy programs. While consumers may realize an improvement in fuel economy as a result of this regulation, the intent is to establish emissions standards for all greenhouse gases, not just carbon dioxide.

EPCA and the CAA regulate two different subjects, fuel economy and air pollution, respectively, and for two different reasons: reducing energy consumption and protecting the public health and welfare from air pollution. Contrary to the commentor's assertion, the proposed rule adopts emissions standards, not fuel economy standards. California adopted, and Washington is proposing to adopt, emission standards for all motor vehicle greenhouse gases and consequently Washington is not preempted by EPCA.

83. Comment: The California motor vehicle greenhouse regulation is invalid under the Dormant Commerce Clause of the U.S. Constitution because it excessively burdens interstate commerce in "relation to [its] putative local benefits." *Pike v. Bruce Church, Inc.* 397 U.S. 137, 142 (1970). [10, 20, 21, 22]

Response: The commentor asserted the same argument in comments to CARB. Ecology agrees with CARB's response in the Final Statement of Reason:

...there is no dormant Commerce Clause violation here, either because the Clean Air Act exempts these regulations from dormant Commerce Clause analysis, or because under deferential review of public health and environmental regulations, the benefits here clearly outweigh the burdens under the *Pike* balancing test (*Pike v. Church*, 397 U.S. 137 (1970)).

In support of its findings, CARB also stated:

"Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with Interstate Commerce." *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204 (1983), quoted in *Oxygenated Fuels Association, Inc. v. Davis* 163 F.Supp.2d 1182 (E.D. Cal. 2001) {subsequent history omitted}.

Finally CARB stated:

California courts have recognized the Commerce Clause exemption that Clean Air Act section 209(b) provides for California's new motor vehicle emission program. *People ex.rel. State Air Resources Bd. V. Wilmshurst* (App 3 Dist. 1999) 68 Cal.App. 4th 1332, 1345. See also discussion in

Jordan v. Department of Motor Vehicles, (1999) 75 Cal.App.4th 449, 461. Thus, if California intends to or does seek a waiver of federal preemption under section 209(b), a court should exempt the subject regulations from dormant Commerce Clause analysis.

84. Comment: Beginning in 2009 model year, the California regulation applies stringent requirements on the six largest automakers but delays requirements on small and mid-sized manufacturers until the 2016 model year. The delayed implementation together with less demanding requirements provide an overwhelming competitive advantage to small and mid-sized manufacturers and is grossly unfair to General Motors and other domestic manufacturers. [20]

85. Comment: The California regulation requires that automobile manufacturers be grouped together for compliance purposes, in cases where one company has at least a 10% equity ownership interest in the other, or in cases where a third party owns at least 10% of the equity in two or more automobile manufacturers. This creates a significant barrier to GM's ability to create normal business alliances and collaborations worldwide, to the detriment of GM's ability to compete in all markets worldwide and to meet the needs of our customers. [20]

86. Comment: Efforts by individual States or groups of States interfere with national policy in this area, and are therefore preempted by the foreign affairs power and the Supremacy Clause of the US Constitution. [10, 20, 21, 22]

87. Comment: Ecology should make an independent assessment of the issues presented by the CARB greenhouse gas rule, because there are many flaws in the regulation as well as the technical analysis that was performed by CARB. Several of these flaws are so severe that they put the regulation in violation of federal law, as well as California law, and these violations are being challenged in court. [20]

Response to comments 84 thru 87: CARB responded to these issues in detail during its rulemaking process. Ecology has reviewed and agrees with CARB's responses to these comments. In addition, these issues, along with others referenced in this section, are being litigated. If the commentators prevail and greenhouse gas regulations are overturned, Washington regulations may need to be changed to remain consistent with the California rules.

IV. Summary of Public Involvement Actions

In accordance with ESHB 1397, Ecology convened a rule advisory committee for the development of Chapter 173-423 WAC - Low Emission Vehicles. The committee included auto manufacturers, franchise and independent auto dealers, environmental organizations, the American Lung Association, the Puget Sound Clean Air Agency, and the American Automobile Association. Ecology held rule

advisory committee meetings on June 14, July 21, August 16 and September 13, 2005.

The Air Quality Program conducted three public hearings for Chapter 173-423 WAC - Low Emission Vehicles. The public hearings were held in Spokane (November 9), Bellevue (November 14), and Vancouver (November 15). Bob Saunders and Brett Rude from the Air Quality Program attended all of the hearings.

Legal notices of the hearings were published in the Washington State Register on October 19, 2005, Washington State Register Number 05-20-099. Ecology also advertised the hearings in the Daily Journal of Commerce, The Spokesman Review and the Columbian on October 17, 2005, and mailed information regarding the proposed rule to about 40 interested parties and posted material on the Air Quality Program's website. Notice of proposed rulemaking and an invitation for public comment were also published on Ecology's public events web page. A copy of the advertisements and mailings are found in appendix C.

Three members of the public attended the hearing in Spokane, eleven attended the hearing in Bellevue, and five attended the hearing in Vancouver. Bob Saunders and Brett Rude conducted a workshop prior to each hearing. The workshop involved presentations on the purpose of the proposed rule, details regarding the rule, and closed following a period of question and answers. A copy of the presentation and handout materials are found in appendix C.

V. Appendices: Chapter 173-423 WAC Low Emission Vehicles

A. List of Commentors

B. Comments

1. Transcribed Comments

2. Written Comments

C. Public Involvement

D. Final Rule

Appendix A

List of Commentors

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles

Appendix B

Comments

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles

1. *Transcribed Comments*
2. *Written Comments*

1. Transcribed Comments

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles

2. Written Comments

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles

Appendix C

Public Involvement

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles

Appendix D

Final Rule

Concise Explanatory Statement and Responsiveness Summary
Chapter 173-423 WAC Low Emission Vehicles