



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 07, 2023

TIME: 9:40 AM

WSR 23-19-007

Agency: Washington Department of Ecology AO#23-02

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-13-007 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 173-446 WAC Sections 150 (Accounts for registered entities) and 370 (Allowance price containment reserve account)

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|------------------|---------|--|---|
| October 24, 2023 | 10:00AM | Hearing via webinar. Join online and see instructions: https://waecy-wa.gov.zoom.us/meeting/register/tZEseyprDMsE9L6Qk4Y4SDv0YnuuvOwAP83 | Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. |

Date of intended adoption: February 21, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Nikki Harris

Address: Department of Ecology
Climate Pollution Reduction Program
PO Box 47600, Olympia, WA 98504-7600
Email: nikki.harris@ecy.wa.gov

Fax:

Other: <https://aq.ecology.commentinput.com?id=7VWB4Jcsg>

By (date) November 1, 2023

Assistance for persons with disabilities:

Contact Nikki Harris
Phone: 360-764-6018

Fax:

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711

Email: nikki.harris@ecy.wa.gov

Other:

By (date) November 1, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Ecology is making two clarifications to the rules governing the cap-and-invest program under RCW 70A.65 (Chapter 173-446 WAC). These rule clarifications concern the operation of the Allowance Price Containment Reserve (APCR). Ecology will make two rule changes to clarify:

1. That the existing holding limits specified in WAC 173-446-150(2)(a), that apply to allowances with a "vintage," also apply to the "vintage less" allowances that are acquired through APCR auctions. "Vintage year" means the annual allowance allocation budget year to which an individual Washington GHG allowance is assigned. This means that one entity can hold only a certain number of allowances in its account at a time.
2. Adding language to WAC 173-446-370 to clarify that any allowances purchased in an APCR auction must be deposited directly into the entity's compliance account. This change would prevent those allowances from being sold

or traded on the secondary market, thereby ensuring that the allowances will be used to meet compliance obligations and not for speculative purposes.

We have also adopted emergency rules on this subject. Please visit our website for information and to participate in the permanent rulemaking process: <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-446-apcr>

Reasons supporting proposal: The cap-and-invest program under RCW 70A.65 establishes an emissions trading market intended to help meet the state's emission limits specified in RCW 70A.45.020. The program relies on a well-functioning market to discover the appropriate price for allowances, thereby efficiently allocating greenhouse gas (GHG) emission reductions while minimizing overall costs to the economy and consumers. In order to ensure the program works as designed, Ecology is required to adopt measures to maintain the integrity of the market and prevent market manipulation. This rulemaking clarifies that APCR allowances are subject to holding limits and can only be used for compliance. These changes limit the number of APCR allowances an entity may hold at any given time and ensure that APCR allowances cannot be further traded. Without this rulemaking, the cap-and-invest rules lack clarity on the nature of APCR allowances. Some entities might think that one entity would be able to hold an unlimited number of APCR allowances, and would be able to trade those allowances, giving that entity sufficient market power to unfairly manipulate the market while undermining the purpose of the APCR, which is to assist in containing compliance costs for covered and opt-in entities. This rulemaking is therefore necessary to ensure market integrity and achieve GHG emissions reductions in an economically efficient manner. Without this rulemaking, the market could be distorted, allowing an inefficient distribution of allowances, which could be sold at distorted prices. This market distortion could affect not only program participants but consumers more generally.

Statutory authority for adoption: RCW 70A.65 (GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM)

Statute being implemented: RCW 70A.65 (GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM)

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Washington State Department of Ecology

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|---------------|-----------------|--------------|
| Drafting: | Luke Martland | Lacey, WA | 360-764-3666 |
| Implementation: | Luke Martland | Lacey, WA | 360-764-3666 |
| Enforcement: | Luke Martland | Lacey, WA | 360-764-3666 |

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Nikki Harris

Address: Department of Ecology
Climate Pollution Reduction Program

PO Box 47600, Olympia, WA 98504-7600

Phone: 360-764-6018

Fax:

TTY:

Email: nikki.harris@ecy.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

This information is excerpted from Ecology's complete set of regulatory analyses for this rulemaking. For complete discussion of the likely costs, benefits, minimum compliance burden, and affected entities, see the associated Regulatory Analyses document (Ecology publication no. 23-02-093, September 2023).

The proposed rule amendments are not likely to result in costs or benefits as compared to the baseline, considering the following in conjunction with the baseline rule:


- The CCA law's requirements for consistency and for prevention of market manipulation.
- The intended contents of compliance and holding accounts.
- Which parties may participate in APCR auctions under the baseline (covered and opt-in entities).
- Differentiation between attributes of allowances from the APCR and regular auction allowances.
- The purpose of APCR auctions being intended to allow covered and opt-in entities to purchase additional allowances needed for compliance at a reasonable price.
- Attributes of other jurisdictions' allowances from reserves, with no vintage.

In the absence of the above considerations, we also do not expect the proposed rule to result in costs to small businesses. During the initial rulemaking for the baseline rule, we chose to complete the requirements under the RFA out of an abundance of caution, though it was not likely that small businesses would incur compliance costs under the rule (see WA Department of Ecology, 2022. Final Regulatory Analyses for Chapter 173-446 WAC, Climate Commitment Act Program. Ecology publication no. 22-02-047. September 2022. See Chapter 7 for discussion of business sizes.). In the current rulemaking, and using the alternative interpretation that does not account for the above considerations, a business that could potentially incur costs would likely be large and have significant resources and assets to be able to make additional strategic purchases of allowances from the APCR.

As the proposed rule amendments are not likely to impose compliance costs on small businesses, this rulemaking is exempt from the requirements of the RFA under RCW 18.85.025(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Nikki Harris
Address: Department of Ecology
Climate Pollution Reduction Program
PO Box 47600, Olympia, WA 98504-7600
Phone: 360-764-6018
Fax:
TTY:
Email: nikki.harris@ecy.wa.gov
Other:

| | |
|--------------------------------|--|
| Date: September 7, 2023 | Signature:  |
| Name: Heather Bartlett | |
| Title: Deputy Director | |