



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: September 07, 2023

TIME: 9:41 AM

WSR 23-19-008

Agency: Department of Ecology AO #23-02

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: 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 are also proposing the permanent adoption of these rule amendments. 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>

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 173-446-150 & 173-446-370
- Suspended:

Statutory authority for adoption: RCW 70A.65 (Greenhouse Gas Emissions - Cap and Invest Program)

Other authority: RCW 70A.65.220

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: 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. Ecology filed emergency rules because the changes needed to be in place before the first APCR auction, which was triggered by the regular quarterly auction in May. Ecology must hold an APCR auction when the settlement price in a quarterly auction reaches the APCR Tier I price (the lower of the two prices set by ecology for allowances auctioned from the allowance price containment reserve). Ecology finds that immediate amendment of this rule to maintain these emergency changes is necessary for the general welfare, and that observing the time requirements of notice and opportunity to comment required for adoption of a permanent rule would be contrary to the public interest.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:


New	___	Amended	<u>2</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: September 7, 2023	Signature: 
Name: Laura Watson	
Title: Director	