

WAC 173-424-720 Emergency deferral. (1) **Emergency deferral due to fuels shortage.** Ecology may issue an order declaring an emergency deferral of compliance with the carbon intensity standard during the effective compliance period:

(a) After ecology determines, in consultation with the governor's office and the Washington department of commerce:

(i) Extreme and unusual circumstances exist that prevent the **distribution of an adequate supply of renewable fuels** needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;

(ii) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could **not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels** to the state; and

(iii) **It is in the public interest to grant the deferral** such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(b) To determine the extent of the fuel shortage and the amount of the fuel needed for regulated parties to comply with that year's standard, ecology will consider the following:

(i) The volume and carbon intensity of the fuel determined to be not available under (a) of this subsection;

(ii) The estimated duration of the shortage; and

(iii) Whether there are any options that could mitigate the shortage including, but not limited to:

(A) The same fuel from other sources;

(B) Substitutes for the affected fuel and the carbon intensities of those substitutes are available; or

(C) Banked clean fuel credits are available.

(c) In addition to the determination in (a) of this subsection, such a temporary and extremely unusual deferral is allowed only if:

(i) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;

(ii) The deferral is effective for the shortest practicable time period ecology determines necessary to permit the correction of the extreme and unusual circumstances; and

(iii) Ecology has given public notice of a proposed deferral.

(d) No later than 15 calendar days after the date that ecology determines to issue emergency deferral according to (a) of this subsection.

(2) **Content of an emergency deferral order.** An order declaring an emergency deferral under this section must set forth:

(a) The duration of the emergency deferral;

(b) The types of fuel to which the emergency deferral applies;

(c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:

(i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;

(ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or
(iii) Suspending deficit accrual during the emergency deferral period.

(3) **Termination of emergency deferral.** An emergency deferral may be terminated prior to the expiration date:

(a) If new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended.

(b) After ecology consults with the department of commerce and the governor's office in making an early termination decision.

(c) Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.

(4) In addition to the emergency deferral specified in subsection (1) of this section, ecology may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under the following conditions.

(a) If ecology finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control.

(b) Such deferral may be initiated by ecology at its own discretion or at the request of a person regulated under this chapter.

(c) In making decision to issue a deferral under this subsection, ecology may consider the results of the fuel supply forecast in WAC 173-424-730, but is not bound in its decision-making discretion by the results of the forecast.

(d) Ecology may renew issued deferrals under this section.

(e) If ecology issues a deferral pursuant to this subsection, it may require the person subject to the deferral to:

(i) File a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Take specific actions to achieve full compliance with the requirements of this chapter.

(f) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter.

[Statutory Authority: Chapter 70A.535 RCW. WSR 22-24-004 (Order 21-04), § 173-424-720, filed 11/28/22, effective 12/29/22.]