

WSR 23-13-007
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY

[Order 23-02—Filed June 8, 2023, 8:12 a.m.]

Subject of Possible Rule Making: Ecology is making two clarifications to the rules governing the cap-and-invest program under chapter 70A.65 RCW (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. This means that one entity can hold only a certain number of allowances in its account at a time.

2. That it's 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 an emergency rule on this topic. Please visit the rule-making website for more information. We will operate under emergency rules until we adopt a permanent rule.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70A.65 RCW, Greenhouse gas emissions—Cap and invest program.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The cap-and-invest program under chapter 70A.65 RCW 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 rule making 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 rule making, 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 rule making is therefore necessary to ensure market integrity and achieve GHG emissions reductions in an economically efficient manner. Without this rule making, allowances could be misallocated at distorted prices, which could affect not only program participants but consumers more generally.

Process for Developing New Rule: Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (chapter 34.05 RCW).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Nikki Harris, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-764-6018, Washington relay service or TTY call 711 or 877-833-6341, email nikki.har-

ris@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446-Apr-26>.

Additional comments: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

June 8, 2023
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