



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Rule Implementation Plan**

**Clean Air Rule - Chapter 173-442 WAC**

**and**

**Reporting of Emissions of Greenhouse  
Gases - Chapter 173-441 WAC**

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## Publication and Contact Information

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# Purpose

The Washington State Department of Ecology (Ecology) provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

## Introduction

On September 15, 2016, Ecology adopted the new rule Chapter 173-442 WAC, Clean Air Rule, and amendments to existing rule Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases (AO # 15-10). The purpose of this rule implementation plan is to inform those who must comply with Chapters 173-441 and 173-442 WAC about how Ecology intends to:

- implement and enforce the rules;
- inform and educate persons affected by the rules;
- promote and assist voluntary compliance for the rules;
- evaluate the rules; and
- train and inform Ecology staff about the new or amended rules.

Also included in this plan is information about the following:

- Supporting documents that may need to be written or revised because of the new rule or amended rule
- Other resources where more information about the rule is available
- Contact information for Ecology employees who can answer questions about the rule implementation

## Implementation and Enforcement

Ecology is responsible for implementing and enforcing Chapter 173-442 WAC, Clean Air Rule (CAR) and Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases. RCW 70.94.430 establishes enforcement authority for regulations adopted under Washington's Clean Air Act.

### Implementation

The rules establish the regulatory structure including several major implementation pieces including baseline emission determinations, criteria for who is covered, compliance period obligations for covered parties, and data reporting and verification.

The first compliance period will begin in 2017. Ecology anticipates full implementation of the program in 2020. This is when covered parties designated as energy intensive trade exposed (EITE) and petroleum product importers enter the program. Ecology will phase other parties into the program as the compliance threshold lowers by 5,000 MT CO<sub>2</sub>e each compliance period through 2035.

Ecology is determining the level and type of resources including staffing and infrastructure needed to implement the rule. Ecology anticipates using both existing and new resources to implement the CAR. Although Ecology has not yet determined the specific needs for additional

implementation staffing, the likely tasks related to CAR’s implementation, enforcement, and on-going workload fall into four main groups:

<ul style="list-style-type: none"> <li>• <b>First Steps and Baseline Determinations</b></li> </ul>	<ul style="list-style-type: none"> <li>• Establish new section to implement the program</li> <li>• Establish baselines and assign reduction pathways</li> <li>• Establish output-based intensity for energy intense, trade exposed (EITE) covered parties and benchmark emissions</li> <li>• Develop and issue regulatory orders</li> <li>• Conduct outreach and training for covered parties and public</li> <li>• Identify, collect, verify, and evaluate data and calculation methodologies used to determine greenhouse gas (GHG) emissions from various baseline emissions or product-based GHG intensity benchmarks</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Compliance Obligations and Pathways</b></li> </ul>	<ul style="list-style-type: none"> <li>• Analyze and respond to petitions and subsequent appeals from EITE covered parties to modify or exempt their compliance obligation(s)</li> <li>• Review and verify compliance reports by both voluntary or mandatory Environmental Protection Agency (EPA) and CAR covered parties</li> <li>• Verify emission reductions generated under EPA’s Clean Power Plan and Washington’s Emission Performance Standard when used for compliance,</li> <li>• Evaluate and negotiate policy-related issues associated with the development, implementation, and validation of alternative emission reduction projects, activities, programs, and GHG offset protocols</li> <li>• Certify which external carbon markets can provide allowances for use in CAR</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Registry, Reporting, and Verification</b></li> </ul>	<ul style="list-style-type: none"> <li>• Conduct field work/site visits</li> <li>• Register and provide technical support to covered parties</li> <li>• Establish reporting guidance and standards; analyze and publish compliance data</li> <li>• Develop online tools and related tech to administer registry and compliance tracking</li> <li>• Develop and administer GHG third-party verifier program - track and verify certification status, train verifiers on specifics/distinctions of Washington program – certify verification bodies</li> <li>• Review with engineering staff third-party verifier reports of emission reduction units (ERUs) generated</li> </ul>
<ul style="list-style-type: none"> <li>• <b>ERUs and Reserve</b></li> </ul>	<ul style="list-style-type: none"> <li>• Develop and/or evaluate methods to qualify and validate transportation, energy, livestock/agricultural, waste and waste water, and industrial sector projects, activities and/or programs used or intended to generate ERUs</li> <li>• Develop guidance and criteria for the allocation of reserve credits; monitor, track and account for distribution of reserve credits</li> <li>• Validate, monitor, and track compliance obligations, the generation, banking, trading, expiration and clear legal ownership of ERUs and emission allowances</li> <li>• Evaluate and negotiate policy-related issues associated with the development, implementation, and validation of alternative emission reduction projects, activities, programs, and GHG offset protocols</li> </ul>

Ecology does not anticipate major updates to the GHG reporting tools used currently by entities reporting under Chapter 173-441 WAC. For more information on this subject, please see Ecology’s Final Cost-Benefit and Least-Burdensome Alternative Analysis, Chapter 3.9.

## **Enforcement**

Chapter 173-442 WAC establishes that Ecology is solely responsible for enforcing compliance with CAR and that covered parties are subject to enforcement under RCW 70.94.430. Ecology will require covered parties to submit accurate emission reports detailing adherence to their compliance pathway. Ecology will consider each metric ton of GHGs not covered by an ERU emitted over a covered party's compliance obligation a separate violation of the chapter subject to a fine of up to \$10,000 for each violation.

Ecology expects CAR enforcement to function similarly to that of other existing air pollution rules and statutes. The new CAR section, within the Air Quality Program, would accomplish day-to-day enforcement efforts. Registered third parties will verify compliance reports and facilitate, broker, or assist in the transfer of ERUs recorded in registry accounts. Registered third parties will not have enforcement authority. Both Ecology and the third parties will verify the validity of data submitted by covered parties and perform site inspections.

Enforcement authority for GHG reporting under Chapter 173-441 WAC already lies with Ecology. The amendments made during this rulemaking will not require Ecology to change how compliance and enforcement occur. Ecology's GHG reporting enforcement authority will continue and expand.

## **Informing and Educating Persons Affected by the Rule**

Upon adoption of CAR, Ecology will issue a press release and send email notice to the following listservs:

- Air Quality Rules and SIPs
- Greenhouse Gas Reporting
- WA Carbon Reduction
- WAC Track (Ecology's distribution list)

The agency will also post on social media and allow time for interviews with media. Ecology will notify all known regulated facilities and anyone that commented on the rule or attended a public hearing (where the agency has contact information). Ecology will respond to those who commented on the CAR during the formal comment period through the Concise Explanatory Statement.

Ecology will post the final rule language and supporting documents for these rule adoptions on the CAR web page. When the codified rule language becomes available, Ecology will post the language for both chapters on the agency web page. The agency will also post and update a number of supporting educational materials on the CAR web page.

Throughout the rulemaking process, Ecology has done the following to help inform interested persons and regulated entities:

- Emailed persons on the distribution list established for this rulemaking and related listservs
- Sent out public notices and issued press releases

- Posted information on Ecology’s website and social media sites
- Held numerous stakeholders meetings
- Held two in-person public hearings, two public hearing webinars, multiple public information events in Seattle and Spokane, and several online informational webinars

Ecology staff will be available to answer questions and to assist and train persons and businesses affected by CAR. Once CAR implementation begins, Ecology will develop an outreach plan. This plan may include instructional videos, training webinars, and targeted outreach for covered parties. These products will educate and inform stakeholders and promote voluntary compliance.

## **Promoting and Assisting Voluntary Compliance**

Ecology staff will assist covered parties in complying with CAR-mandated emissions reductions and with reporting requirements under Chapter 173-441 WAC. (Please see previous answer for a description of the outreach plan).

Ecology will develop online tools to assist with compliance. These tools will assist covered parties in online registration, emission reporting, and tracking and issuing ERUs through a registry. Ecology also plans to create a listserv specific to the CAR program. We will post instructions for joining the listserv on our web site.

Throughout the rulemaking process, Ecology met with potentially regulated stakeholders on many occasions to discuss compliance methods and consider feedback. Ecology anticipates continuing this conversation between the agency and the regulated community will help foster voluntary compliance.

## **Evaluating the Rule**

Ecology will routinely evaluate implementation of the rule to determine the need for updates or clarifications. Where Ecology can do this with technical assistance and guidance materials, Ecology will provide these resources. If evaluations of the rule determine that updates are necessary, Ecology will start rulemaking. It is likely that Ecology may need to adjust the program in the initial phases of the program to improve procedure around reduction pathways, correct issues with the reserve, assess connections to external GHG programs, update Clean Power Plan applicability, and make changes for design and clarity. New federal or state GHG policies may also require Ecology to update the CAR. Ecology will work on needed updates with covered parties and interested parties..

Evaluations of the CAR’s effectiveness in reducing GHG emissions in Washington State will occur at the completion of the three-year compliance period when Ecology has complete emissions and reductions data.

WAC 173-442-320 requires that, if another program establishes GHG requirements for covered parties, Ecology will compare the CAR with the new program to determine if the new program requires similar or greater reductions from covered parties. As a result, Ecology may suspend, alter, or repeal some or the entire CAR.



## **Training and Informing Ecology Staff**

Ecology is currently reviewing workload and staffing needs for implementing the CAR. A detailed explanation of staff training is not available at this time. Ecology anticipates using resources from both existing and new staff to implement the rule.

Ecology will train new and existing staff working on CAR implementation in the program's requirements and administration including:

- program development;
- technical assistance and training;
- verification and third-party verifier certification;
- compliance;
- outreach;
- data analysis and publishing;
- software development and IT management;
- protocol evaluation;
- ERU tracking; and
- coordination with jurisdictions.

Ecology has kept current staff up to date on the rulemaking through periodic emails and program briefings and meetings hosted by the program manager and members of the executive team.

Ecology has made extensive information available online including recordings of public webinars and presentations on the rules.

## **List of Supporting Documents that Ecology May Need to Write or Revise**

Ecology will offer guidance material to covered parties. These will include instructional documents and media to assist with compliance. The department plans to hold training webinars for covered parties that will include instructional materials.

Ecology will also need to create materials such as forms and instructions for ERU registry and compliance pathways. Much of this will be available online.

Ecology does not anticipate significant changes to the way GHG reporting is done, but Ecology may need to revise the reporting instructions.

## More Information

For more information, please visit the CAR website:

<http://www.ecy.wa.gov/programs/air/rules/wac173442/1510ov.html>

Visit the following website to see rule proposal and adoption documents:

<http://www.ecy.wa.gov/programs/air/rules/wac173442/1510docs.html>

For information regarding Ecology's climate change mediation actions and plans, visit here:

<http://www.ecy.wa.gov/climatechange/index.htm>

## Contact Information

For more information regarding CAR implementation, please contact:

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