



Concise Explanatory Statement Chapter 173-446 WAC -Allowance Price Containment Reserve Rule

Summary of Rulemaking and Response to Comments

Washington State Department of Ecology
Olympia, Washington

February 2024, Publication 24-14-016

Updated May 2021

Publication Information

This document is available on the Department of Ecology's website at:
<https://apps.ecology.wa.gov/publications/summarypages/2414016.html>

Contact Information

Climate Pollution Reduction Program

P.O. Box 47600

Olympia, WA 98504-7600

Phone: 564-233-1572

Website: [Washington State Department of Ecology](http://www.ecology.wa.gov)¹

ADA Accessibility

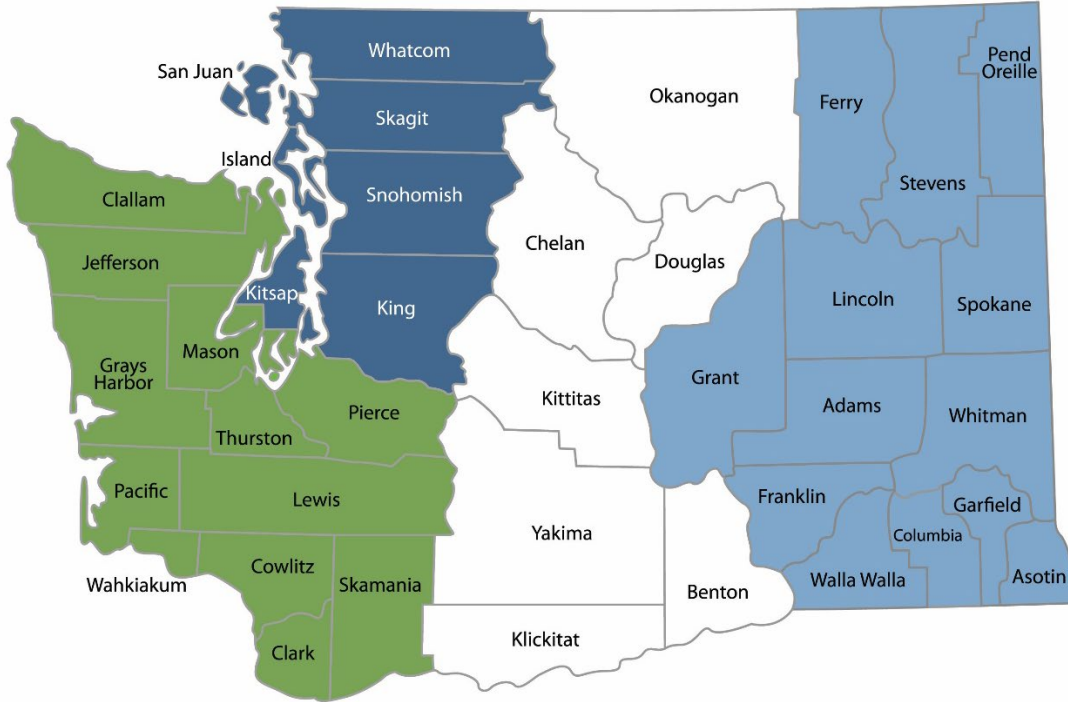
The Department of Ecology is committed to providing people with disabilities access to information and services by meeting or exceeding the requirements of the Americans with Disabilities Act (ADA), Section 504 and 508 of the Rehabilitation Act, and Washington State Policy #188.

To request an ADA accommodation, contact Ecology by phone at 360-764-6018 or email at nikki.harris@ecy.wa.gov. For Washington Relay Service or TTY call 711 or 877-833-6341. Visit Ecology's website for more information.

¹ <http://www.ecology.wa.gov/contact>

Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region 360-407-6300	Northwest Region 206-594-0000	Central Region 509-575-2490	Eastern Region 509-329-3400
---	---	---------------------------------------	---------------------------------------

Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
Headquarters	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

Concise Explanatory Statement

Chapter 173-446 WAC Allowance Price Containment Reserve Rule

Climate Pollution Reduction Program
Washington State Department of Ecology
Olympia, WA

February 2024 | Publication 24-14-016



DEPARTMENT OF
ECOLOGY
State of Washington

This page is purposely left blank

Table of Contents

Introduction1

Reasons for Adopting the Rule2

Differences Between the Proposed Rule and Adopted Rule.....3

List of Commenters and Response to Comments4

Appendix A: Citation List..... Error! Bookmark not defined.

Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Allowance Price Containment Reserve Rule
WAC Chapter(s):	Chapter 173-446 WAC
Adopted date:	February 21, 2024
Effective date:	March 23, 2024

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

Reasons for Adopting the Rule

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 greenhouse gas (GHG) allowance is assigned. Holding limits ensure that one entity can hold only a certain number of allowances in its account at a time.
2. That any allowances purchased in an APCR auction must be deposited directly into the entity’s compliance account. This change to WAC 173-446-370 prevents APCR 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 trading purposes.

The cap-and-invest program under RCW 70A.65 establishes an emissions trading market in GHG compliance instruments 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 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 traded after purchase. 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.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are no differences between the proposed rule filed on September 7, 2023 and the adopted rule filed on February 21, 2024.

List of Commenters and Response to Comments

Ecology received comments from one commenter, the Western States Petroleum Association (WSPA).

Comment:

WSPA commented that the proposed changes to the rule are sensible and helpful clarifications.

Ecology Response:

Thank you for your comment.

Comment:

WSPA also noted that the following issues, which WSPA acknowledges are not part of this rulemaking, should be part of a rulemaking process:

- (1) clarification around limited exemptions for holding limits, especially for 2023 allowances;
- (2) the method for determining how many allowances will be available for each APCR auction.

Ecology Response:

Thank you for your comment. As you note, these suggestions are outside the scope of this current rulemaking. This rulemaking is solely to make permanent the provisions of the emergency rulemaking ensuring that APCR allowances are subject to holding limits, and that they are deposited directly into an entity's compliance account. We will consider these suggestions as we move forward with future rulemakings concerning WAC 173-446.