



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 22, 2021
TIME: 8:55 AM

WSR 22-01-217

Agency: Department of Ecology AO # 21-05

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-16-110 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Ecology is proposing a new rule – Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed Industries – to implement portions of the Washington Climate Commitment Act (Engrossed Second Substitute Senate Bill 5126) or Greenhouse Gas Emissions - Cap and Invest (Chapter 70A.65 RCW).

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446A>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 25, 2022	10:00 am	Webinar	<p>Presentation, question and answer session followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions: https://watech.webex.com/watech/onstage/g.php?MTID=ee10c952215967de2da5661b0183667ec</p> <p>For audio call US Toll number 1-415-655-0001 and enter access -code 2461 674 9008. Or to receive a free call back, provide your phone number when you join the event.</p>

Date of intended adoption: June 1, 2022 (Note: This is NOT the effective date)

Submit written comments to:

Name: Katie Wolt

Address: Send US mail to:

Department of Ecology

Air Quality Program

PO Box 47600

Olympia, WA 98504-7600

Email: Katie.wolt@ecy.wa.gov

Fax: N/A

Other: Online: <https://aq.ecology.commentinput.com/?id=uRYGW>

By (date) February 1, 2022

Assistance for persons with disabilities:

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email: ecyADAACoordinator@ecy.wa.gov

Other: Visit <https://ecology.wa.gov/accessibility> for more information.

By (date) January 18, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking proposes to:

- Establish criteria to identify emissions-intensive, trade-exposed industries (EITE) that will be eligible for no-cost emission allowances.
- Consider the locations of potential EITE industries in relation to overburdened communities while developing the criteria.
- Include requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of the Climate Commitment Act (CCA).

Reasons supporting proposal: In 2021, the legislature passed the CCA, which establishes a cap and invest program to help achieve Washington’s goal of greenhouse gas limits by 2050. Ecology will undertake three separate rulemakings to address the requirements in the law.

This rulemaking implements part of Section 13 of the CCA, which identifies industries classified as EITE. The rulemaking also establishes objective criteria to allow additional businesses consideration for EITE classification. The CCA also directs Ecology to consider, while developing the objective criteria, the locations of potential EITE facilities in relation to overburdened communities.

EITE industries emit a significant amount of greenhouse gases (GHG) and operate in competitive markets.

The CCA identifies 13 specific industries as EITE:

1. Metals manufacturing
2. Paper manufacturing
3. Aerospace product and parts manufacturing
4. Wood products manufacturing
5. Nonmetallic minerals manufacturing
6. Chemical manufacturing
7. Computer and electronic product manufacturing
8. Food manufacturing
9. Cement manufacturing
10. Petroleum refining
11. Asphalt paving mixtures and block manufacturing from refined petroleum
12. Asphalt shingle and coating manufacturing from refined petroleum
13. All other petroleum and coal products manufacturing from refined petroleum

Facilities that meet the EITE criteria may be eligible to receive an allocation of allowances for the covered emissions at those facilities at no cost. Ecology is responsible for providing criteria that accurately identifies and classifies new EITE businesses.

Statutory authority for adoption: Washington Climate Commitment Act (Engrossed Second Substitute Senate Bill 5126), Chapter 316, Laws of 2021, codified as RCW 70A.65.110

Statute being implemented: Washington Climate Commitment Act (Engrossed Second Substitute Senate Bill 5126), Chapter 316, Laws of 2021, codified as RCW 70A.65.110

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Department of Ecology Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Emily Bruns	300 Desmond Dr SE, Lacey, WA 98503	360-338-2360
Implementation:	Luke Martland	300 Desmond Dr SE, Lacey, WA 98503	360-764-3666
Enforcement:			

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No
If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:
Name: N/A
Address: N/A
Phone: N/A
Fax: N/A
TTY: N/A
Email: N/A
Other: N/A

Is a cost-benefit analysis required under RCW 34.05.328?
 Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Katie Wolt
Address: Department of Ecology
Air Quality Program
PO Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6998
Fax: N/A
TTY: For Washington Relay Service or TTY call 711 or 877-833-6341
Email: Katie.wolt@ecy.wa.gov
Other:
 No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):
 This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.
Citation and description:
 This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.
 This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) .
Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY: .
Email:
Other:

Date: December 22, 2021

Name: Heather Bartlett

Title: Deputy Director

Signature:

