



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: June 03, 2022

TIME: 2:17 PM

WSR 22-13-026

Agency: Department of Ecology AO 21-06

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR 22-11-067

- Preproposal Statement of Inquiry was filed as WSR 21-16-111 ; 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) The rulemaking is proposing a new chapter in the Washington Administrative Code, Chapter 173-446 WAC, Climate Commitment Act Program. The purpose of this new chapter is to establish and implement the programmatic framework in the Climate Commitment Act (Greenhouse Gas Emissions- Cap-and-Invest Program, Engrossed Second Substitute Senate Bill 5126, Chapter 316, Laws of 2021, codified as RCW 70A.65).

This CR-102 continuance filing:

- Extends the comment period to July 15, 2022; and
- Announces the availability of a revised Preliminary Regulatory Analysis that corrects a previous calculation error.

The proposed rule language was not changed as part of this continuance.

For more information on this rulemaking, including hearing dates and proposed rule language, visit:

<https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:

Date of intended adoption: September 29, 2022 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Joshua Grice

Address: Send US mail to:
Department of Ecology
Air Quality Program
PO Box 47600, Olympia, WA 98504-7600

Or
Send parcel delivery services to:
Department of Ecology
Air Quality Program
300 Desmond Dr. SE, Lacey, WA 98503

Email: ecyreclimaterules@ecy.wa.gov

Fax: N/A

Other: Online: <https://aq.ecology.commentinput.com/?id=6Nx2J>

By (date) July 15, 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: ecyADAcoordinator@ecy.wa.gov

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

By (date) June 16, 2022

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

Reasons supporting proposal:

Statutory authority for adoption: RCW 70A.65.220 Adoption of Rules

Statute being implemented: RCW 70A.65.060 through 70A.65.210 (Climate Commitment Act – Cap and Invest Program)

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

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

Name of proponent: (person or organization) Department of Ecology

Private

Public

Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kay Shirey	Lacey, WA	564-200-2372
Implementation:	Luke Martland	Lacey, WA	360-764-3666
Enforcement:	Luke Martland	Lacey, WA	360-764-3666

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: Joshua Grice

Address: Department of Ecology
Air Quality Program
PO Box 47600, Olympia, WA 98504-7600

Phone: 360-280-6566

Fax: N/A

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

Email: ecyreclimaterules@ecy.wa.gov

Other: The cost-benefit analysis is included in the revised Preliminary Regulatory Analysis. This revised report corrects a previous calculation error that resulted in overestimation of costs and benefits, each by the same amount. In the previous version of this report, allowance prices were inadvertently applied to no cost allowances, resulting in identically higher allowance purchase costs and allowance market revenues. This correction does not result from a change in the proposed rule language, and does not impact net benefits or the conclusions. The revised Preliminary Regulatory Analysis is available at: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>.

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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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: The revised Preliminary Regulatory Analysis includes corrected calculations to costs and benefits; the Small Business Economic Impact Statement was also revised to be consistent with these corrected calculations. The revised Preliminary Regulatory Analysis is available at: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>.

The following explanation of exemptions is unchanged from the original CR-102 filing (WSR 22-11-067).

The analyses required under the RFA, and their inclusion in a Small Business Economic Impact Statement, are based on whether the proposed rule would impose compliance costs on small businesses. A rule is otherwise exempt from these analyses under RCW 19.85.025(4).

Based on available information, we did not identify any small businesses that would be covered entities and therefore required to comply with the proposed rule. The average business that is likely to be a covered entity under the proposed rule employs 19,273 people. However, we do not have full information concerning all potential covered entities. For example,

about half of the 50-60 expected electric power entities (EPEs) that would potentially start reporting under recent amendments to the GHG reporting rule (Chapter 173-441 WAC), would also be covered entities. Based on the size of other covered entities, we do not expect these EPEs to be small businesses.

While it may be reasonable to assume that EPEs are all large businesses, we cannot be certain of all their attributes. This is particularly true for EPEs for which we have uncertainty about emissions levels. Due to uncertainty about the employment attributes of electric power entities, we chose to complete a Small Business Economic Impact Statement and complete work required under the RFA, to understand potential disproportion in the impacts of the proposed rule.

As the RFA requires analyses specifically related to employment impacts and price or output impacts (as they play into revenue and profits), we also determined this analysis would be the most appropriate space to discuss macroeconomic modeling we performed to understand the potential impacts of the proposed rule.

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: N/A
TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.
Email:
Other:

Date: 6/3/2022	Signature: 
Name: Heather Bartlett	
Title: Deputy Director	