



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: June 27, 2024

TIME: 9:31 AM

WSR 24-14-057

Agency: Department of Ecology AO # 23-01

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 23-14-026 ; 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) Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases Rule) and Chapter 173-446 WAC (Climate Commitment Act Program Rule), Electricity Markets Rulemaking

For more information on this rulemaking, please visit: <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-441-446>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 6, 2024	1:00 PM	Hearing via webinar. Join online and see instructions: https://waecy-wa-gov.zoom.us/meeting/register/tZlkdeCrqTgiH9WgLsdLU9TAdqV-5Z5bcddJ	Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.
August 8, 2024]	9:00 AM]	Hearing via webinar. Join online and see instructions: https://waecy-wa-gov.zoom.us/meeting/register/tZlsduypqzgiEtPFx2hAdGWb5y0eJSL6Pcv-	Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.]

Date of intended adoption: December 3, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name Gopika Patwa
 Address Send US mail to:
 Department of Ecology
 Climate Pollution Reduction Program
 PO Box 47600, Olympia, WA 98504-7600
 Or
 Department of Ecology
 Climate Pollution Reduction Program
 300 Desmond Dr. SE, Lacey, WA 98503
 Email gopika.patwa@ecy.wa.gov
 Fax N/A

Other <https://aq.ecology.commentinput.com?id=ijhB5kQRH>

Beginning (date and time) June 27, 2024 12:00 AM

By (date and time) August 20, 2024 11:59 PM

Assistance for persons with disabilities:

Contact Ecology ADA Coordinator
 Phone 360-407-6831

Fax N/A

TTY People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711

Email ecyADAcordinator@ecy.wa.gov

Other N/A

By (date) August 2, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: In 2021, the Washington Legislature passed the Climate Commitment Act (CCA), which established a Cap-and-Invest Program to help Washington meet statutory greenhouse gas (GHG) emission limits.

To align with the requirements of the CCA, this rulemaking is proposing amendments to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases) and Chapter 173-446 WAC (Climate Commitment Act Program Rule).

The purpose of these updates is to help determine which electricity importers from centralized electricity markets should be covered under the Cap-and-Invest Program. This rule does not modify the eligibility criteria for inclusion under the Cap-and-Invest Program. The rule establishes a framework that identifies the resources supplying the relevant electricity into centralized electricity markets based on the market mechanisms that operators of these markets put in place. The resulting compliance obligation is assigned in the Climate Commitment Act Program Rule (Chapter 173-446 WAC), with the processes and procedures for identifying resources contained with the Reporting of Emissions of Greenhouse Gases Rule (WAC 173-441). Supporting changes to the Reporting Rule will also ensure that appropriate data are available.

The proposal applies to existing and future centralized electricity markets including the Energy Imbalance Market, the Extended Day Ahead Market, and the Markets+ initiative underway by the Southwest Power Pool. The proposal also addresses other issues related to the reporting of greenhouse gas emissions for entities importing electricity to Washington.

Specifically, this rulemaking proposes to provide:

- A framework for addressing imports of electricity from specified resources through centralized electricity markets.
- A process for identifying the electricity importer for imported electricity from centralized electricity markets.
- Methods for assigning greenhouse gas emissions to imports of electricity from centralized electricity markets.
- Equitable treatment across and between bilateral and centralized electricity markets.
- Non-substantive administrative and process-related changes for clarity and to harmonize the rule with recent statutory changes.

Reasons supporting proposal: This rulemaking is required by RCW 70A.65.080 (1)(c). The rulemaking is necessary to ensure that specified sources of electricity imported into the state from centralized electricity markets can be identified and counted as covered emissions in the Cap-and-Invest Program. Currently, there is a lack of clear methodologies and procedures to assign the compliance obligations on the importing entity. Additionally, this rulemaking will allow centralized electricity market operators to put in place the necessary data infrastructure to track importing entities and report that information to Ecology

Statutory authority for adoption: RCW 70A.65.080 (1)(c)

Statute being implemented: Greenhouse Gas Emissions-Cap and Invest Program, Program Coverage, RCW 70A.65.080 (1) (c); Greenhouse Gas Emissions-Cap and Invest Program, Adoption of rules, RCW 70A.65.220; Washington Clean Air Act, Classification of air contaminant sources-Registration-Fee-Registration program defined-Adoption of rules requiring persons to report emissions of greenhouse gases, RCW 70A.15.2200 (5)

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

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Gopika Patwa	Lacey	(360) 338-2419
Implementation	Lindsey Kennelly	Lacey	(360) 584-7426
Enforcement	Lindsey Kennelly	Lacey	(360) 584-7426

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 Gopika Patwa

Address Department of Ecology
Climate Pollution Reduction Program
PO Box 47600, Olympia, WA 98504-7600

Phone (360) 338-2419

Fax N/A

TTY People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call

Washington Relay Service at 711

Email gopika.patwa@ecy.wa.gov

Other

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: Check one.

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; Chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The Small Business Economic Impact Statement (SBEIS) below includes a summary of the baseline for this rulemaking, and whether or how the proposed rule differs from the baseline.

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

This Small Business Economic Impact Statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by Ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to “businesses in an industry” in Washington State. This means that impacts, for this analysis, are not evaluated for government agencies.

The existing regulatory environment is called the “baseline” in this analysis. It includes only existing laws and rules at federal and state levels.

This information is excerpted from Ecology's complete set of regulatory analyses for this rulemaking. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Preliminary Regulatory Analyses document (PRA; **Ecology publication no. 24-14-052, June 2024**). We have retained the section numbering, table numbers, and chapter references from the PRA for easier cross-referencing.

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES

The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rulemaking, the baseline includes:

- The CCA law, Chapter 70A.65 RCW (“Greenhouse Gas Emissions – Cap and Invest Program”).
- Section 2200 of the WA Clean Air Act, RCW 70A.15.2200 (“Classification of air contaminant sources – Registration – Fee – Registration program defined – Adoption of rules requiring persons to report emissions of greenhouse gases”).
- The existing GHG reporting rule, Chapter 173-441 WAC (“Reporting of Emissions of Greenhouse Gases”).
- The existing CCA rule, Chapter 173-446 WAC (“Climate Commitment Act Program Rule”).
- Engrossed Second Substitute Senate Bill 6058, Chapter 352, Laws of 2024, Sec. 11 (“Carbon market linkage – California- Québec carbon market”).
- RCW 19.405 (“Washington Clean Energy Transformation Act”; CETA).
- California Air Resources Board (CARB) Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17 California Code of Regulations (CCR), Div. 3, Ch. 1, Subchapter 10, Article 2).
- CARB California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Title 17 CCR, Div. 3, Ch. 1, Subchapter 10, Article 5).
- The Federal Power Act (16 USC Ch. 12).
- Federal Energy Regulatory Commission (FERC) regulation and approval of market tariffs.

2.3 Proposed rule amendments

The proposed rule amendments would:

- Amend reporting requirements in the GHG reporting rule (Chapter 173-441 WAC):
 - Amending the definition of “Electric Power Entity” (EPE).
 - Changing annual report submission requirements.
 - Adding, removing, or changing definitions specific to EPE reporting requirements.
 - Expanding data requirements and calculation methods from the EIM to all CEMs.
 - Specifying how EPEs must report imported CEM electricity.
 - Expanding documentation requirements.

- Specifying GHG emissions equations and applicability.
- Amending requirements for registration of import or export sources.
- Making changes without material impacts:
 - Clarify language and update terminology.
 - Remove obsolete requirements and language.
- Amend the CCA rule (Chapter 173-446 WAC):
 - Adding definitions consistent with the GHG reporting rule.
 - Amending covered emissions to reflect electricity imported from CEMs.

2.3.1 Amending the definition of “Electric Power Entity” (EPE) (173-441)

The proposed rule amendments would expand the definition of EPE to include entities that transact electric power in WA. This proposed amendment would extend reporting requirements to electricity importers and exporters, retail providers, and asset controlling suppliers that transact electric power in the state. This would result in reporting costs for entities that transact power in WA but are not suppliers, and benefits of comprehensive GHG emissions data collection related to electricity transactions in the state if that data is not being collected under the baseline.

Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amendments, associated costs and benefits associated with those sections of the rule, below, include the relevant baseline and proposed definitions.

2.3.2 Changing annual report submission requirements (173-441)

The proposed rule amendments would require each EPE to submit a single annual report by June 1 of each year. This proposed amendment would reduce reporting costs for EPEs, by not requiring a preliminary report by March 31 of each year. Ecology believes that a single annual report is sufficient to provide necessary GHG emissions reporting data to meet program needs. This would also be consistent with similar requirements for EPE reporting in other jurisdictions.

2.3.3 Adding, removing, or changing definitions specific to EPE reporting requirements (173-441)

The proposed rule amendments would add, remove, or change various definitions specific to EPEs:

- The proposed amendments would add definitions of:
 - “Centralized electricity market” (CEM)
 - “Deemed market importer”
 - “Market operator”
 - “Market participant”
 - “Markets+”
 - “Surplus electricity”
- The proposed amendments would remove definitions of:
 - “First jurisdictional deliverer” (FJD).
 - “Generation providing entity” (GPE).
- The proposed amendments would amend definitions of:
 - “Direct delivery of electricity
 - “Electricity importer”:
 - “Electricity transaction”
 - “Exported electricity”
 - “Imported electricity”
 - “Power contract”
 - “Specified source”

Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amendments, associated costs and benefits associated with those sections of the rule, below, include the relevant baseline and proposed definitions.

2.3.4 Expanding data requirements and calculation methods from the EIM to all CEMs (173-441)

The proposed rule amendments would replace the EIM with CEMs.

This proposed rule amendment would result in expansion of the types of CEMs the GHG reporting rule applies to. This would, in turn, contribute to costs associated with reporting emissions from electricity from these markets, as well as benefits of supporting centralized market functions, efficiencies, and use in WA.

2.3.5 Specifying how EPEs must report imported CEM electricity (173-441)

The proposed rule amendments would:

- Require reporting entities to report electricity from CEMs:
 - For the EIM, for 2023-2026, retail providers receiving electricity facilitated through the EIM are the electricity importers. If the market operator identifies deemed market importers that offer energy attributed to WA before 2026, those are the deemed market importers beginning in the following year.
 - Each deemed market importer must separately report electricity assigned, designated, deemed, or attributed to WA by an originating CEM.

- Each deemed market importer must annually calculate, report, and verify GHG emissions for the electricity they offered that was designated, deemed, or attributed to WA.
- Add a requirement that for electricity dispatched by a CEM, EPEs must report specified electricity sales attributed to market participants outside WA or exported from the market to entities outside WA, for unspecified and specified sources disaggregated by recipient.
- Add a requirement that retail providers must report net purchases from CEMs based on annual total purchases from each separate market.
- In the baseline specification that reporting includes retail sales from the EIM, replace the EIM with each CEM.
- In the application and maintenance requirements for asset controlling suppliers, replace first jurisdictional deliverers with deemed market importers.

This proposed rule amendment would contribute to overall reporting costs, as well as costs associated with designation of importers and attribution of electricity. It would also contribute to benefits of:

- Accurate identification of electricity imports from centralized markets and who is importing that power.
- Participation and development of CEMs.
- Data collection supporting the state's statutory goals related to GHG emissions tracking, planning, and reductions.

Based specifically on proposed rule language related to regulatory timing and transition, Washington Energy Imbalance Market (EIM) importers would not be considered deemed market importers for reporting years 2023-2026. Since only deemed market importers would be required to report emissions associated with specified power CEM imports, this means these reporting costs and benefits would not occur until the 2027 reporting year. Similarly, these costs and benefits would not occur for imports from future CEMs such as EDAM and Markets+ until they launch operations (currently expected in May 2026 and in 2027, respectively). We therefore assume reporting costs and benefits would not occur until reporting year 2027.

2.3.6 Expanding documentation requirements (173-441)

The proposed rule amendments would add documentation requirements for any other reports provided by the market operator to the EPE documenting electricity attributed to WA for which that EPE is the deemed market importer. This proposed rule amendment would result in minor costs of retaining additional documents, as well as benefits of maintaining verifiable records underlying GHG emissions reporting.

2.3.7 Specifying GHG emissions equations and applicability (173-441)

The proposed rule amendments would remove reference to WAC 173-444-040(4), and replace it with a numerically equivalent equation in which emissions are the product of the number of MWh, an unspecified emissions factor, and a transmission loss multiplier. The unspecified emissions factor would be 0.428 MT CO₂e/MWh, and the transmission loss multiplier would be 1.02. The simplified equation would therefore be MWh multiplied by 0.437, equivalent to the baseline equation.

The proposed rule would also specify that the equation for specified electricity emissions also applies to specified electricity deemed, designated, assigned, or attributed by a CEM.

We do not expect this proposed rule amendment to result in costs or benefits, beyond clarity in which equation must be used facilitating compliance. This is because the newly proposed equation is numerically equivalent to the baseline equation in Chapter 173-444.

2.3.8 Amending requirements for registration of import or export sources (173-441)

Under the proposed rule amendments, deemed market importers would be included in the types of specified facilities or units required to register their anticipated specified sources, by a registration deadline of February 1st of each year. The amendments would also add required information to be provided for registration, and specify that EPEs must be able to demonstrate that the market operator designated, assigned, deemed, or attributed the energy from those sources to WA.

Finally, the amended rule would require EPEs to provide settlement records or other documentation requested by Ecology, by May 1 of each year.

These proposed rule amendments are likely to result in additional or expanded reporting costs. They would also contribute to benefits of:

- Accurate identification of electricity imports from centralized markets and who is importing that power.
- Participation and development of CEMs.
- Data collection supporting the state's statutory goals related to GHG emissions tracking, planning, and reductions.

2.3.9 Making changes without material impacts (173-441)

The proposed rule amendments would clarify that point of receipt and point of delivery reports must use an e-tag code only where applicable. They would also delete the requirement to report when unspecified power came from the EIM. These proposed amendments are not likely to result in costs or benefits as compared to the baseline, beyond clarity. Since e-tag codes are not applicable to all power transactions, the clarification that they must be used only when applicable would reduce confusion for covered entities. Under the collective proposed rule amendments, the requirement to report unspecified power from the EIM would become obsolete, and so its removal would not have material impact given the other proposed amendments would collect necessary information about specified imports from CEMs.

2.3.10 Adding definitions consistent with the GHG reporting rule (173-446)

This proposed rule amendment would add definitions to the CCA rule, to make it consistent with proposed amendments to the GHG reporting rule. It would define the following by explicit reference to the reporting rule:

- Centralized electricity market.
- Deemed market importer.

These proposed amendments would facilitate consistency between terms in the CCA rule and GHG reporting rule.

Definitions do not, in and of themselves, have impact beyond how the defined terms are used in the rule. Where definitions inform the coverage, scope, or type(s) of impacts under the proposed rule amendments, costs and benefits associated with those sections of the rule, below, include the relevant baseline and proposed definitions.

2.3.11 Amending covered emissions to reflect electricity imported from CEMs (173-446)

Compliance obligations

The baseline CCA rule defines emissions that are covered under the Cap-and-Invest Program, beginning with reported emissions under the GHG reporting rule, and modifying those reported emissions to only those that are not exempt and are covered by the program. This includes allotment provisions to avoid double-counting emissions or counting emissions the rule does not apply to.

As part of those provisions, the CCA rule specifically states that it, “provides details on allotment for covered emissions that are potentially attributable to multiple parties and provides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity.” It also notes that it only describes the process for determining which covered or opt-in entity is responsible for a given metric ton of covered emissions after exemptions are accounted for, and does not expand the definition of covered emissions itself.

The subsection relevant to this rulemaking defines the allotment of covered emissions for first jurisdictional deliverers of imported electricity:

- Emissions from imported electricity are covered for the first jurisdictional deliverer that is importing electricity.
- If the importer is a federal power marketing administration that is not voluntarily complying with the Cap-and-Invest Program, the importer is the next purchaser-seller on the e-tag. Otherwise, the utility receiving the electricity is the importer.
- If the importer is a federal power marketing administrations that is voluntarily participating in the Cap-and-Invest Program, then the utilities buying from it may provide (by agreement) that the federal power marketing administration is assuming the compliance obligation for emissions from the imported electricity.
- For the first compliance period (2023-2026), the importer for electricity from the EIM is the purchaser in WA that receives it. If the first jurisdictional deliverer generates and has a compliance obligation for the electricity that is transferred through the EIM, and that electricity is then delivered into WA, there is no second compliance obligation for it.

The baseline CCA rule also specifies that Ecology may adjust covered emissions based on new reported information, new assigned emissions levels, or to compensate for changes in methodology.

Allocation of no-cost allowances

In section 230, the baseline CCA rule also defines how no-cost allowances are distributed to electric utilities under the Cap-and-Invest Program. Allowances are a form of compliance instrument that can be used to satisfy compliance obligations for GHG emissions. Utilities subject to the WA Clean Energy Transformation Act (CETA; Chapter 19.405 RCW) are eligible to receive no-cost allowances to use for compliance, monetize by consigning them to the allowance market, or bank for future use. By allocating no-cost allowances to electric utilities, the CCA program helps them mitigate the impacts of the following on retail electricity prices and ratepayers:

- Utility compliance obligations.
- Increased wholesale electricity prices passed on to utilities by generators, marketers, or importers that have compliance obligations.

Allocations are based on the “cost burden effect”. This effect is calculated by multiplying the electricity load from each type of source by the emissions factor for that source, and then adding up those emissions across all types of sources.

The CCA rule states that initial allocations will be adjusted as necessary to account for the difference between applicable reported emissions for prior years and the number of no-cost allowances allocated. Allocations may also be adjusted based on updated forecasts.

Proposed

The proposed rule amendments include the following changes to the baseline covered emissions discussed above, to allocate covered emissions (and resulting compliance obligations) for electricity imported from CEMs:

- Importers are identified using the GHG reporting rule.
- If the importer is a federal power marketing administration, it may voluntarily comply for either all sales into WA or for attributions to WA in a CEM for which it is a deemed market importer. In this case the federal power marketing administration takes on the associated compliance obligation.
- Requirements related to EIM power during the first compliance period are deleted.
- The compliance obligation is only determined once for electricity from an electric generating facility in WA that is sold into a CEM, and is then assigned, designated, deemed, or attributed back into WA by that market.

These proposed amendments, in combination with proposed amendments to the GHG reporting rule, would establish compliance obligations for emissions associated with specified sources of electricity imported through CEMs. Ecology

would assign these obligations to those entities identified as CEM importers, distributing compliance obligations in line with actual importing behavior of each EPE. This would result in compliance costs for those entities facing new compliance obligations associated with CEM imports.

Since new information also influences the cost burden effect that Ecology uses to allocate no-cost allowances to electric utilities, we also expect these proposed amendments to result in additional allocation of no-cost allowances to match the aggregate increase in compliance obligations. Additional no-cost allowances would be a benefit to those receiving them, as they can choose to:

- Use (“retire”) the allowances to meet compliance obligations.
- Consign the allowances to the allowance market, to receive money for them based on the market’s settlement price. This allows utilities to offset compliance costs incurred by importers further up their electricity supply chain.
- Bank the allowances for future use, including potential retirement or consignment in future years.

Whereas we expect these costs and benefits to be the same in the aggregate over time, it is possible for there to be transitional periods during which they are not. This is because of current uncertainty about the process that will be used to update forecasts and adjust no-cost allowance allocations. Depending on how no-cost allowance adjustments are made, and how they occur over time as new information becomes available, there may be periods during which there are differences between the numbers of new compliance obligations and new no-cost allowances. Each of these circumstances has its own net costs and benefits, depending on whether new demand for allowances (from compliance obligations) is less than or greater than new supply (from no-cost allowance allocations).

Based specifically on proposed rule language related to regulatory timing and transition, EIM importers would not be considered deemed market importers for reporting years 2023-2026. Since only deemed market importers would be required to report emissions associated with specified power CEM imports, this means the above costs and benefits associated with new compliance obligations and new no-cost allowance allocations would not occur until the 2027 reporting year. Similarly, these costs and benefits would not occur for imports from future CEMs such as EDAM and Markets+ until after they launch operations (currently expected in May 2026 and in 2027, respectively). We therefore assume these costs and benefits would not occur until reporting year 2027.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, PROFESSIONAL SERVICES

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment, supplies, or professional services.

COSTS OF COMPLIANCE: LABOR, ADMINISTRATIVE, AND OTHER

3.2.1.2 Electricity importer compliance

To estimate the costs electricity importers would face under the proposed rule, as compared to the baseline, we considered the number of current and potential future importers. We then applied a range of estimated costs to different types of importers, based on whether they currently report EIM imports, currently report emissions (as they emit more than the reporting threshold of 10,000 MT CO₂e), or don’t currently report (emit below the threshold).

Total estimated annual costs ranged from \$14,124 to \$26,786, depending on the number of CEM energy importers reporting in a given year, and whether it is their first year of reporting imports from CEMs. When considering flows of costs over time, Ecology calculates the present value of costs. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value cost of additional reporting effort as approximately \$368,000 over 20 years. This is equivalent to an average annual present value cost of \$17,527 over the next 20 years.

3.2.2 Costs: New obligations and allocations

To estimate costs associated with new compliance obligations established and assigned under the proposed rule amendments, we considered current imports, potential growth trajectories over time, and potential allowance price profiles. Multiplying allowance prices by the range of estimated GHG emissions associated with electricity imports from CEMs, we estimated total annual costs (aggregated across all CEM importers) of between \$7 million and \$119 million. Total costs increase as a larger proportion of GHG emissions is assumed to come from CEM imports, and fall as the decrease in total GHG emissions outweighs CEM import growth.

When considering flows of costs over time, Ecology calculates the present value of costs. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value cost of new compliance obligations as between \$497 million and \$1.2 billion over 20 years, with the first year of costs occurring in 2027.

COST-SAVINGS

4.2.2 Benefits: New obligations and allocations

CEM import data and associated GHG emissions identified under the proposed rule amendments would impact compliance obligations under the CCA program (see Section 3.2.2) but would also impact the allocation of no-cost allowances to CETA-covered retail utilities. These allocations are intended to mitigate the costs of CCA compliance obligations, whether their costs are incurred directly (by utilities) or indirectly and passed on in wholesale prices (by a generator or marketer that sells to a utility).

New data gathered under the proposed rule amendments would influence the cost burden effect that Ecology uses to allocate no-cost allowances. As a result, we expect the proposed amendments to result in additional allocation of no-cost

allowances to match the aggregate increase in compliance obligations. Additional no-cost allowances would be a benefit to those receiving them, as they can choose to:

- Use (“retire”) the allowances to meet compliance obligations.
- Consign the allowances to the allowance market, to receive payment for them based on the market’s settlement price. This allows utilities to offset compliance costs incurred by importers further up their electricity supply chain.
- Bank the allowances for future use, including potential retirement or consignment in future years.

4.2.2.1 Value of additional no-cost allowances

Corresponding to our assumptions and estimated new compliance obligations in Section 3.2.2, we estimated annual increases in the allocation of no-cost allowances based on the cost burden effect equation (see Section 2.3.11 for detailed discussion of no-cost allowance allocation). Conceptually, these values are equal, and compliance obligations are offset by no-cost allowance allocations in the aggregate – this way, GHG emissions are accounted for in the CCA program while mitigating potential impacts to electricity ratepayers.

Multiplying allowance prices by the range of estimated new no-cost allowances allocated under the proposed rule, we estimated the total value of this benefit as between \$7 million and \$119 million in a given year over the next 20 years. When considering flows of benefits over time, Ecology calculates the present value of benefits. A present value discounts future dollar values into current dollars, accounting for both inflation and the opportunity cost of having funds later instead of now. We estimated the 20-year present value benefit of new no-cost allowance allocations as between \$497 million and \$1.2 billion over 20 years.

4.2.3 Benefits: Centralized electricity market function

It is not clear to what degree or how efficiently CEMs would be able to operate in WA under the baseline. This is because of complex and uncertain factors such as baseline CCA law’s requirements for covered emissions (including those from imported electricity, though Ecology is tasked with adopting a rule that specifies the process for their inclusion), the lack of a specified mechanism to identify deemed market importers, and potential difficulties EPEs that participate in CEMs could have in demonstrating compliance with the law. This could create enforcement challenges and undermine the effectiveness of regulatory oversight and Ecology’s ability ensure the state meets statutory GHG emissions reduction goals.

Market operators may also:

- Incur higher transaction costs under the baseline, due to a need for additional risk management measures. These costs could then be passed on to consumers through higher electricity prices, without mitigation such as no-cost allowance allocations to utilities.
- Encounter difficulties ensuring fair competition or preventing electricity market manipulation, due to a lack of clear guidance. This could reduce CEM efficiency and raise costs.
- Be reluctant to invest in infrastructure upgrades or new technologies, which could create gaps in market coverage. Where coverage is possible, it could still be inefficient, and carry risks of grid instability, congestion, or failure due to lacking infrastructure.

As a result, the proposed specifications of CEM importer identification and compliance obligation responsibility support EPEs and consumers receiving the benefits of CEMs operating in WA. These include:

- Cost-efficiency and cost-savings. For example, CEM participants were estimated to receive various benefits of cost savings:
 - During the 4th quarter of 2023, EIM participants attained nearly \$400 million in cost-savings.
 - 2022 modeling of benefits of the EDAM estimated that the West could save over \$500 million per year in operating costs and similar annual savings from avoiding additional capacity investments. Separate 2023 modeling estimated cost savings for five specific participants of nearly \$500 million annually.
- Improved availability and integration of renewable resources, and feasibility of efficiently meeting statutory GHG reduction goals.
- Improved grid reliability and matching of generating resources and demand.
- Reduced renewable resource curtailment when supply exceeds local demand.
- Improved allocation of emissions-generating resources that are more efficient.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES

We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of the Preliminary Regulator Analyses. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule amendments employs about 12 people. The largest ten percent of affected businesses employ an average of 900 people. Many of the entities potentially impacted by the proposed rule are also governments, and are excluded from this analysis. Based on cost estimates in Chapter 3, we estimated compliance costs per employee. As discussed in chapters 3 and 4, there is uncertainty about how costs and cost-savings will be distributed. In some cases, the businesses that incur costs will also receive cost-savings (e.g., a utility participating in a CEM), but in other cases they may be separate businesses. To capture various possibilities, we estimated the following average compliance costs per business in the first year the proposed rule amendments are likely to result in costs.

Table 1. Costs per business

Cost Estimate Type	Cost	Cost-Savings	Net Cost
Low estimate	\$321,929	(\$320,955)	\$974
High estimate	\$926,079	(\$925,105)	\$974

Then, based on costs per business and business size (small or large), we calculated costs per employee, as summarized in the tables below.

Table 2. Costs per employee, net costs

Business Size	Cost per employee
<i>Small</i>	\$42
<i>Largest</i>	\$1

Table 3. Cost per employee, gross costs

Business size	Low cost per employee	High cost per employee
<i>Small</i>	\$13,779	\$39,638
<i>Largest</i>	\$358	\$1,029

Table 4. Cost per employee, cost-savings

Business size	Low benefit per employee	High benefit per employee
<i>Small</i>	(\$13,737)	(\$39,596)
<i>Largest</i>	(\$357)	(\$1,028)

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, with regard to compliance costs, but may disproportionately benefit small businesses that receive a benefit of cost-savings. As we cannot confidently identify cases in which businesses will see only costs, only cost-savings, or both, Ecology has conservatively included elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

MITIGATION OF DISPROPORTIONATE IMPACT

The RFA (19.85.030(2) RCW) states that:

“Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- c) Reducing the frequency of inspections;
- d) Delaying compliance timetables;
- e) Reducing or modifying fine schedules for noncompliance; or
- f) Any other mitigation techniques including those suggested by small businesses or small business advocates.”

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rulemaking. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rulemaking.

Substantive regulatory requirements

The authorizing statutes do not allow Ecology to reduce, modify, or eliminate substantive regulatory requirements for any covered entities under the reporting rule or CCA rule. The areas of the rule reflecting these statutory requirements are captured in the scope of the rules, and include program coverage, compliance timetables or support of consistency with potentially linked jurisdictions, and penalties. Ecology does not have discretion in these substantive regulatory requirements.

The baseline rule and proposed amendments also allow for a federal power marketing administration to take on compliance obligations in place of small entities that purchase imported electricity from them.

Recordkeeping and reporting requirements

Recordkeeping and reporting requirements in the baseline rule and in the proposed rule amendments rely largely on maintaining consistency with other programs, using known operations data and information, and using standardized common calculations. Ecology developed the proposed amendments to reporting requirements to provide information necessary for the data’s use in the CCA program, and at the same time to be feasible for importers and CEM processes, based on interested party input.

Inspections

This rulemaking does not address inspections, and inspections are not required under the baseline rules.

Compliance timetables

Compliance deadlines are specified in the authorizing statutes. Ecology cannot use its discretion to change these deadlines. We note also that the proposed amendments would remove some of the phased-in compliance timelines that were included in the baseline rules when they were first adopted but are no longer necessary. As part of the 2022 rulemaking amending the reporting rule, Ecology received information that EPEs (many of which are small) desired later deadlines for the new program. While the statute specifies the reporting deadline, the rule amendments adopted at that time allowed EPEs to submit a provisional report by that deadline, followed by a final report two months later as proposed by interested parties. After gaining experience with the reporting program, reporters are more likely to be able to meet the statutory deadline, and may save costs of developing and submitting separate preliminary reports.

Penalties and noncompliance

The statute specifies many elements related to noncompliance, and could not be changed.

Other reductions of burden

Ecology also considered multiple alternative requirements during development of the proposed rule. These were found to either impose more burden on covered parties, or to not meet the goals and objectives of the authorizing statutes. See chapter 6 for discussion of these alternatives.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

We involved small businesses and local governments in its development of the proposed rule amendments, using the following methods. Recipients and attendees include members of the public, local governments, small businesses, and business associations.

- Emails sent to meeting requirements one day prior to meetings as a reminder.
- Rule development meeting reminders via gov delivery to all rulemaking subscribers.
- Informational session #1 – July 25, 2023.
- Informational session #2 – August 2, 2023.
- Draft language input review meeting #1 – August 12, 2023.
- Draft language input review meeting #2 – August 16, 2023.
- Listening session – August 18, 2023.
- Individual meetings (by request) with:
 - BPA – August 31, 2023.
 - Western Power Trading Forum – September 6, 2023.
 - Public Generating Pool – September 11, 2023.
- Informational meeting with CAISO – September 12, 2023.
- Informational meeting with Southwest Power Pool – September 28, 2023.
- First informal comment period – July 25 to August 25, 2023.
- Second informal comment period – October 5 to October 30, 2023.
- Third informal comment period – November 8 to November 27, 2023.
- Draft language input review meeting #3 – January 24, 2024.
- Individual meetings (by request) with:
 - CARB- March 25, 2024
 - CARB & CAISO- April 10, 2024

CARB- May 3, 2024 Attendees variously included local and state government:

- City of Issaquah.
- City of Shoreline.
- City of Tacoma.
- Office of the Attorney General.
- Puget Sound Clean Air Agency.
- Spokane Regional Clean Air Agency.
- WA Department of Commerce.
- WA Department of Health.
- WA Public Ports Association.
- WA Department of Transportation.
- WA Parks and Recreation Commission.
- Washington State Parks and Recreation Commission.
- Washington Utilities and Transportation Commission.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/naics/>.

- 221122 Electric power distribution
- 221118 Other electric power generation

CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS

Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business’s production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes. Finally, overall shifts in economic activity in the state, including competition within markets and attributes of the labor market simultaneously adjust in response to changes in compliance costs.

Similarly, employment within directly impacted industries, other industries in Washington, the labor market within and outside of the state, and in the state as a whole will also adjust in response to a change in costs.

We used the REMI E3+ model for Washington State to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for variables including but not limited to:

- Inter-industry impacts.
- Price changes, including wages.
- Interstate and international trade.
- Population or labor market changes.
- Dynamic adjustment of all economic variables over time.

Because the REMI model aggregates homogeneous sectors, all estimated costs and cost-savings under the proposed rule amendments would occur within the same industry grouping: Electric power generation, transmission, and distribution. This means the costs of new compliance obligations and the benefits of new no-cost allowance allocations net out to zero impact. This leaves estimated reporting costs as the net inputs into the model.

Estimated additional reporting costs under the proposed rule amendments are relatively small compared to the electricity sector and state economy as a whole. As a result, the model simulations did not identify any impacts to statewide employment or output. They also did not identify any impacts to employment or output at the industry grouping level.

While we did not identify any employment or output impacts of the proposed rule as a whole, there may be distributional impacts within the electricity sector in WA. As discussed in chapters 3 and 4, there is considerable uncertainty about how costs and cost-savings (benefits) would be distributed across electricity importers participating in CEMs and electric utilities. Traditionally, competitive businesses with higher net operating costs would face downward pressure on output and their use of labor.

Electricity importers may also face different incentives and limitations (e.g., obligations to meet demand, government or nonprofit structures, limited local competition or geographic monopolies, regulations governing electricity rates, or variable timing of available generating resources). Where ability to respond with changes to employment or output (positive or negative) are limited, impacts may instead manifest as changes to planned infrastructure investments or timing.

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 People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>

Email

Other

<p>Date: June 27, 2024</p>	<p>Signature:</p> 
<p>Name: Heather Bartlett</p>	
<p>Title: Deputy Director</p>	