



# PROPOSED RULE MAKING

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: February 12, 2025  
TIME: 7:36 AM

WSR 25-05-041

**Agency:** Department of Ecology AO#23-04

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR** 23-19-027 ; 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 173-446 WAC (Climate Commitment Act Program Rule), Offsets rulemaking.

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

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
March 25, 2025	1 p.m.	Hearing via webinar. Join and see instructions: <a href="https://waecy-wa-gov.zoom.us/meeting/register/tZIsd-yorTorE9BuetAq9Ex9bWWO-Ff6dN_T">https://waecy-wa-gov.zoom.us/meeting/register/tZIsd-yorTorE9BuetAq9Ex9bWWO-Ff6dN_T</a>	Presentation and 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 with internet access.
March 27, 2025	9 a.m.	Hearing via webinar. Join and see instructions: <a href="https://waecy-wa-gov.zoom.us/meeting/register/tZIsctu2vrT4iGNzTVjZXsrfb-EzqKvYaZdCM">https://waecy-wa-gov.zoom.us/meeting/register/tZIsctu2vrT4iGNzTVjZXsrfb-EzqKvYaZdCM</a>	Presentation and 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 with internet access.

**Date of intended adoption:** July 9, 2025 (Note: This is **NOT** the effective date)

<p><b>Submit written comments to:</b></p> <p>Name <u>Kayla Stevenson</u></p> <p>Address <u>Department of Ecology</u> <u>Climate Pollution Reduction Program</u> <u>P.O. Box 47600</u> <u>Olympia, WA 98504-760</u></p> <p>Email <u>kayla.stevenson@ecy.wa.gov</u></p> <p>Fax _____</p> <p>Other <a href="https://ecology.commentinput.com?id=Aj7DMGYHa">https://ecology.commentinput.com?id=Aj7DMGYHa</a></p> <p>Beginning (date and time) <u>February 12, 2025, at 12 a.m.</u></p> <p>By (date and time) <u>April 4, 2025, at 11:59 p.m.</u></p>	<p><b>Assistance for persons with disabilities:</b></p> <p>Contact <u>Kayla Stevenson</u></p> <p>Phone <u>(360) 972-0313</u></p> <p>Fax _____</p> <p>TTY <u>711 or (877) 833-6341</u></p> <p>Email <a href="mailto:ecyadacoordinator@ecy.wa.gov">ecyadacoordinator@ecy.wa.gov</a></p> <p>Other <a href="#">Accessibility &amp; ADA - Washington State Department of Ecology</a></p> <p>By (date) <u>March 21, 2025</u></p>
---	--

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of the proposed rule amendments is to update the offset protocol for Ozone Depleting Substances (ODS) and add new ODS protocols. These will increase the potential variety of offset projects that can be developed within the Cap-and-Invest Program, as directed by RCW 70A.65.170(4)(b). This statute directs Ecology to conduct rulemaking that ensures that any updates or additions to the offset program are both based in the best available science and support the needs of landowners and communities in Washington state. The proposed rulemaking amendments restrict project invalidation liability for ODS projects (in reference to [WAC 173-446-580](#)), adopt a new ODS protocol, and require all ODS offset projects commenced

after the effective date of the rule to use the new protocol. The proposed new protocol is based on a protocol that the California Air Resources Board previously adopted (Compliance Offset Protocol Ozone Depleting Substances), and incorporates the following changes:

1. Update Global Warming Potential values from AR4 to AR5.
2. Allow ODS sourced from the federal government.
3. Allow credit generation from Hydrochlorofluorocarbon-22 (HCFC-22).
4. Allow credit generation from medical aerosols and unused solvents
5. Revise to increase clarity of application in Washington's Cap-and-Invest Program.

Anticipated effects include increased technical standards, decreased obstacles to project development, and will reflect policy advances. These rule changes work in tandem with additional rules under the Climate Commitment Act to achieve the state's mandate of net-zero greenhouse gas emissions by 2050.

**Reasons supporting proposal:** The Climate Commitment Act states that Ecology shall consider adopting offset protocols that make use of aggregation (the grouping of multiple small projects into a single, larger offset project) and cost-effective provisions for monitoring, reporting and verification (RCW 70A.65.170). During the public comment period on our initial adoption of Chapter 173-446 WAC, Ecology received 28 comments from organizations, Tribal governments, and individuals recommending offset protocol revisions and additions. Ecology's response to those comments stated the agency's intent to consider new and revised offset protocols in a subsequent rulemaking. The purpose of this rulemaking is to broaden the scope of offset protocols available in the Cap-and-Invest Program. This rulemaking will increase the diversity of offset projects available to Cap-and-Invest Program participants, broadening the scope of potential greenhouse gas reductions in our state

**Statutory authority for adoption:** RCW 70A.65 (Greenhouse Gas Emissions—Cap-and-Invest Program)

**Statute being implemented:** RCW 70A.65 (Greenhouse Gas Emissions—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:** 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	Jordan Wildish	Ecology HQ	(360) 280-6488
Implementation	Jordan Wildish	Ecology HQ	360) 280-6488
Enforcement	Jordan Wildish	Ecology HQ	360) 280-6488

**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
- Address
- Phone
- Fax
- TTY
- Email
- Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name Kayla Stevenson
- Address Department of Ecology  
Climate Pollution Reduction Program  
P.O. Box 47600

Olympia, WA 98504-760

Phone (360) 972-0313

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 [kayla.stevenson@ecy.wa.gov](mailto:kayla.stevenson@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:

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 rule may also be fully exempt from the RFA if it does not affect small businesses (i.e., it does not impose compliance costs on small businesses, or on any businesses).

### Baseline for this rulemaking

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:

Chapter 70A.65 RCW Greenhouse Gas Emissions-Cap and Invest Program

Chapter 173-446 WAC, Climate Commitment Act Program Rule

The California Air Resources Board, Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011.

The California Air Resources Board, Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014.

### The proposed rule

The proposed rule amendments would:

- Amend WAC 173-446-505 to adopt by reference: Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0. All new ODS offset projects with a commencement date after the rule adoption date will be required to use this protocol.

**Baseline**

Chapter 173-446 WAC currently adopts California's Air Resources Board's (CARB) protocol for the destruction of ODS: "Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014".

**Proposed**

Ecology proposes to adopt a new protocol, named "Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0," which is based on the California protocol with modifications (as discussed below in sections 2.3.3 through 2.3.6). All new ODS offset projects with a commencement date after the rule adoption date will be required to use Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0.

**Expected impact**

Ecology's four proposed substantive changes will be considered as separate amendments below. The actual act of adoption of the new protocol will not have significant costs or benefits compared to the baseline aside from the proposed changes within the protocol.

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

- Restrict reasons for offset credit invalidation to events that directly impact ODS handling, destruction and emissions. (WAC 173-446-580(3))

**Baseline**

WAC 173-446-580(3)(b) lists potential reasons for invalidating an issued offset credit. It reads:

(b) The offset project activity(ies) or implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety laws and regulations that apply in the jurisdiction in which the offset project is located and that directly apply to the offset project, including as specified in the applicable compliance offset protocol during the reporting period for which the ecology offset credit was issued.<sup>1</sup>

To date, Ecology has issued ODS offset credits for three projects and has thus far initiated no actions pertaining to their validity.<sup>2</sup>

**Proposed**

The amendment restricts reasons for offset credit invalidation to events that directly impact ODS handling, destruction and emissions. It adds the following, qualifying restriction to WAC 173-446-580(3)(b).

(i) For offset projects using the ozone depleting substances (ODS) protocol non-compliance events that do not directly impact ODS handling, destruction, and emissions from ODS processing will not be considered grounds for an initial determination of invalidation.

**Expected impact**

The amendment clarifies and restricts the reason an ODS offset credit might be invalidated, which would make it of no value. By restricting potential invalidation reasons to those directly impacting the gases involved, project developers would face a more certain regulatory environment. This should make them more willing to engage in developing offset projects for ODS. The restriction of the ability to invalidate offset credits to reasons directly pertaining to ODS handling weakens Ecology's regulatory authority to some degree. The proposed reduction in authority still maintains Ecology's ability to invalidate credits for reasons affecting their legitimacy, however.

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

- The new protocol (Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0) adopted by reference would:  
Add destruction of refrigerant HCFC-22 as a potential source of offset credits.

**Baseline**

The currently adopted protocol is titled "California Air Resource's Board Ozone Depleting Substances Projects Protocol, November 14, 2014". The protocol contains six refrigerants, the recovery and destruction of which can generate offset credits. They are all "CFCs" and are as follows: CFC-11, CFC-12, CFC-13, CFC-113, CFC-114, CFC-115. The 100-year global warming potential relative to CO<sub>2</sub> of these gases range from 4,750 to 14,400 in the currently adopted California protocol.

**Proposed**

The proposed amendment would add destruction of the refrigerant hydrochlorofluorocarbon-22 (HCFC-22), also known as R-22, or by the brand name Freon, as a potential source of offset credits. Within the proposed protocol the global warming

<sup>1</sup> [WAC 173-446-580](#); <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-580>

<sup>2</sup> Communications with Ecology's Climate Pollution Reduction Program, January 2025.

potential assigned to it is 1,789, its cumulative 10-year emission factor is 72%, and its substitute emissions factor is 389. The substitute emissions factor is the expected GWP of the refrigerant that would replace HCFC-22. The 10-year emissions factor is the expected percentage of the material to leak from equipment into the atmosphere over the next 10 years.

#### Expected impact

Of the 6.6 million pounds of ODS refrigerants reclaimed in 2022, 5.7 million (86 percent) were HCFC-22. The relatively large amount of HCFC-22 as a fraction of total ODS refrigerants reclaimed suggests considerable opportunity for the generation of offset credits. However, this is complicated by the relatively strong market for its reuse. At current prices for carbon allowances and offset credits, it is unclear how much if any HCFC-22 will be diverted for destruction versus reuse. If higher prices for compliance instruments (carbon allowances and offsets) materialize, HCFC-22 could become a significant source of ODS offset credits.

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

- The new protocol (Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0) adopted by reference would:  
Add medical aerosols and solvents as a potential source of offset credits.

#### Baseline

CARB's protocol, Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014, allows ODS to be sourced from only the following:

- (1) Refrigerants from industrial, commercial or residential equipment, systems, and appliances or stockpiles;
- (2) ODS blowing agents extracted and concentrated from appliance foams;
- (3) Intact foam sourced from building insulation.

Ecology understands some medical aerosols and solvents contain ODS but are currently unsellable. This material, though not large in amount, resides in stockpiles and warehouses. Overtime, the ODS in this material will leak out into the atmosphere.

#### Proposed

In the proposed protocol, ODS that were marketed as medical aerosols and solvents can be used as a potential source of offset credits. They must be in unused condition.

#### Expected impact

Combined with sourcing from federal facilities, we expect this amendment to generate additional offset credits. We currently lack information as to the amount of material in this specific category, but when combined with material from federal facilities and agencies, one offset program developer reported an anticipated 50,000 to 70,000 additional credits per year might be generated. In addition to expanding the availability of offset credits, the destruction of these gases will prevent damage to the ozone layer, which is showing signs of repair following the coordinated international efforts embodied in the Montreal Protocol.

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

- The new protocol (Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0) adopted by reference would: Add material sourced from the federal government or agencies as a potential source of offset credits.

#### Baseline

CARB's protocol, Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014, allows ODS to be sourced from only the following:

- (1) Refrigerants from industrial, commercial or residential equipment, systems, and appliances or stockpiles;
- (2) ODS blowing agents extracted and concentrated from appliance foams;
- (3) Intact foam sourced from building insulation.

Ecology understands ODS material currently recovered from federal facilities is currently being sold into the reuse market. There had been an expectation that the federal government would facilitate destruction of this material, but this has not happened.

#### Proposed

The proposed rule would allow material sourced from the federal government or agencies as a potential source of offset credits.

#### Expected impact

Adding this source of ODS gases to the proposed protocol should expand the number of offset credit projects developed and ODS destroyed.

Combined with sourcing from unused medical aerosols and solvents, we expect this to generate additional offset credits. There is currently little information about the amount of material in this specific category, but when combined with material from aerosols and solvents, one offset program developer reported an anticipated 50,000 to 70,000 additional credits per year might be generated. In addition to expanding the availability of offset credits, the destruction of these gases will prevent marginal damage to the ozone layer, which is showing signs of repair following the coordinated international efforts embodied in the Montreal Protocol.

Informed by input provided by the ODS working group, Ecology determined that:

“Federal facilities and auctions represent a potentially significant supply of ODS which, unless destroyed, will eventually leak out into the atmosphere. Sourcing ODS from federal sources, as opposed to sourcing from private businesses or state or local government does not impact the integrity of the offset credits generated.”

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

- The new protocol (Ecology Compliance Offset Protocol Ozone Depleting Substances Projects, version 1.0) adopted by reference would: Update the assigned global warming potential values for eligible gases.

**Baseline**

CARB’s protocol, Compliance Offset Protocol Ozone Depleting Substances, November 14, 2014, assigns global warming potential (GWP) values to the gasses eligible for offset credits. Those values come from the Intergovernmental Panel on Climate Changes Assessment Report 4 (AR-4), published in 2007. The assigned 100-year global warming potential for the CFCs in the currently adopted protocol are:

Table 1: Current Global Warming Potential (GWP) Values

ODS Gas	100-year GWP
CFC-11	4,750
CFC-12	10,900
CFC-13	14,400
CFC-113	6,130
CFC-114	10,000
CFC-115	7,370

**Proposed**

The proposed rule would update the assigned global warming potential values for previously eligible gases. Whereas the current values are from the Intergovernmental Panel on Climate Change’s 2011 Assessment Report 4 (AR4), the proposed values are from Assessment Report 5 (AR5), published in 2014. The AR4 values would still be applied to offset projects that commenced before the adoption of the proposed rule. The new values and the relative change are indicated in the table below.

Table 2: Proposed changes In GWP values

ODS	Change	Proposed value (AR5)	Current value (AR4)
CFC-11	-90	4,660	4,750
CFC-12	-700	10,200	10,900
CFC-13	-500	13,900	14,400
CFC-113	-310	5,820	6,130
CFC-114	-1,410	8,590	10,000
CFC-115	300	7,670	7,370

**Expected impact**

The average result is the reduction of GWP values by around five percent. For this set of gases, the same amount of work collecting, transporting and destroying the gases will yield slightly fewer offset credits. The annual variation in the value of those credits, however, is likely to be greater. The price change in California’s offset credits from early November 2025 until early January 2026 for example was more than 10 percent.

The ODS protocol technical working group, formed by Ecology to inform this rulemaking states the following impacts: “Switching to AR5 makes the protocol more up-to-date, more conservative, and also aligns with Ecology’s adopted [hydrofluorocarbon (HFC)] rule (WAC 173-443-030) which uses AR5 values except where substances are otherwise covered by WAC 173-441... AR5 values have now been adopted by all voluntary offset registries with relevant comparable protocols: [American Carbon Registry (ACR)], the Climate Action Reserve, and Verra.”

By using the more widely adopted values, Ecology and offset developers would join a broader consensus as to the value of ODS destruction. This may impart greater confidence in the value of the issued credits.

Relevant Exemptions: [RCW 19.85.025\(4\)](#) (does not affect small businesses).

**(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](#)):
- 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:

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:** February 12, 2025

**Name:** Heather Bartlett

**Title:** Deputy Director

**Signature:**

