

**RCW 80.70.020 Applicability of chapter—Carbon dioxide mitigation plan—Mitigation by a third party.** (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under \*RCW 80.50.020(14)(a), for which an application for site certification is made to the council after July 1, 2004;

(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;

(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and

(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.

(2)(a) A proposed site certification agreement submitted to the governor under RCW 80.50.100 and a final site certification agreement issued under RCW 80.50.100 shall include an approved carbon dioxide mitigation plan.

(b) For fossil-fueled thermal electric generation facilities not under jurisdiction of the council, the order of approval shall require an approved carbon dioxide mitigation plan.

(c) Site certification agreement holders or order of approval holders may request, at any time, a change in conditions of an approved carbon dioxide mitigation plan if the council, department, or authority, as appropriate, finds that the change meets all requirements and conditions for approval of such plans.

(3) An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).

(4) Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility.

(5) If the certificate holder or order of approval holder chooses to pay a third party to provide the mitigation, the mitigation rate shall be one dollar and sixty cents per metric ton of carbon dioxide to be mitigated. For a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit.

(a) Through rule making, the council may adjust the rate per ton biennially as long as any increase or decrease does not exceed fifty percent of the current rate. The department or authority shall use the adjusted rate established by the council pursuant to this subsection for fossil-fueled thermal electric generation facilities subject to the provisions of this chapter.

(b) In adjusting the mitigation rate the council shall consider, but is not limited to, the current market price of a ton of carbon dioxide. The council's adjusted mitigation rate shall be consistent with \*\*RCW 80.50.010(3).

(6) The applicant may choose to make to the third party a lump sum payment or partial payment over a period of five years.

(a) Under the lump sum payment option, the payment amount is determined by multiplying the total carbon dioxide emissions by the twenty percent mitigation requirement under subsection (4) of this section and by the per ton mitigation rate established under subsection (5) of this section.

(b) No later than one hundred twenty days after the start of commercial operation, the certificate holder or order of approval holder shall make a one-time payment to the independent qualified organization for the amount determined under subsection (5) of this section.

(c) As an alternative to a one-time payment, the certificate holder or order of approval holder may make a partial payment of twenty percent of the amount determined under subsection (5) of this section no later than one hundred twenty days after commercial operation and a payment in the same amount or as adjusted according to subsection (5)(a) of this section, on the anniversary date of the initial payment in each of the following four years. With the initial payment, the certificate holder or order of approval holder shall provide a letter of credit or other comparable security acceptable to the council or the department for the remaining eighty percent mitigation payment amount including possible changes to the rate per metric ton from rule making under subsection (5)(a) of this section. [2004 c 224 § 2.]

**Reviser's note:** \*(1) RCW 80.50.020 was amended by 2007 c 325 § 1, changing subsection (14)(a) to subsection (15)(a). RCW 80.50.020 was subsequently amended by 2010 c 152 § 1 and alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (15)(a) to subsection (12)(b). RCW 80.50.020 was subsequently amended by 2022 c 183 § 2 and alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (12)(b) to subsection (14)(b).

\*\* (2) RCW 80.50.010 was amended by 2022 c 183 § 1, changing subsection (3) to subsection (4).