

WSR 24-10-028

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 22-18—Filed April 23, 2024, 7:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-011.

Title of Rule and Other Identifying Information: The rule making is proposing new chapter 173-446B WAC, Climate Commitment Act funds reporting. The purpose of this new chapter is to set reporting requirements for recipients of funding from the Climate Commitment Act (CCA) accounts so that the department of ecology (ecology) can complete an annual report to the state legislature, as required by CCA (RCW 70A.65.300).

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

Hearing Location(s): On June 5, 2024, at 6:00 p.m., via webinar. Join and see instructions <https://waecy-wa-gov.zoom.us/meeting/register/tZUkd-GprTssEtXbgykYl12w4vLzsuuO83VH#/registration>. Presentation and question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer with internet access; and

On June 13, 2024, at 9:00 a.m., via webinar. Join and see instructions https://waecy-wa-gov.zoom.us/meeting/register/tZ0od-6opz0sHdV5Ka67JXtXeBhCXo_H57pl#/registration. Presentation and question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer with internet access.

Date of Intended Adoption: October 1, 2024.

Submit Written Comments to: Harrison Ashby, Send US mail to Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600; or Department of Ecology, Climate Pollution Reduction Program, 300 Desmond Drive S.E., Lacey, WA 98503, email harrison.ashby@ecy.wa.gov, <https://aq.ecology.commentinput.com/?id=E8NYGSfC4>, by June 28, 2024.

Assistance for Persons with Disabilities: Contact Harrison Ashby, phone 360-485-2771, for Washington relay service or TTY call 711 or 877-833-6341, email harrison.ashby@ecy.wa.gov, by June 28, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to establish reporting requirements for recipients of funding from CCA accounts so that ecology can complete our required annual report to the state legislature. These reporting requirements will include those related to RCW 70A.65.230 regarding expenditures that benefit vulnerable populations within the boundaries of overburdened communities and those that are formally supported by a resolution of a tribe. The rule will define what information funding recipients must report to ecology. Additionally, the rule includes requirements for recipients to report on the quantity of greenhouse gas (GHG) emissions reductions expected to result from work funded by CCA.

Reasons Supporting Proposal: This rule making is required by RCW 70A.65.300.

Statutory Authority for Adoption: RCW 70A.65.300.

Statute Being Implemented: RCW 70A.65.300.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Harrison Ashby, Lacey, Washington, 360-485-2771; Implementation and Enforcement: Tai Ralston, Lacey, Washington, 564-233-1616.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Harrison Ashby, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-485-2771, for Washington relay service or TTY call 711 or 877-833-6431, email harrison.ashby@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The only entities required to comply with the proposed rule are the recipients of appropriations from CCA accounts. These entities are government agencies and universities. Recipients may, in turn, choose to have some of the underlying work done by their subrecipients, but the proposed rule does not apply any requirements to those entities. Therefore, this rule does not impose compliance costs on small businesses, and this rule making is exempt from analysis under the Regulatory Fairness Act (chapter 19.85 RCW) according to RCW 19.85.025(4) which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

Scope of exemption for rule proposal:

Is fully exempt.

April 23, 2024
Heather Bartlett
Deputy Director

OTS-5233.3

**Chapter 173-446B WAC
CLIMATE COMMITMENT ACT FUNDS REPORTING**

NEW SECTION

WAC 173-446B-010 Introduction. (1) RCW 70A.65.300 requires the department of ecology (ecology) to submit to the appropriate committees of the legislature an annual report that identifies all distributions of money from the accounts created in RCW 70A.65.240 through 70A.65.280. The department must require by rule that recipients of funds from the accounts created in RCW 70A.65.240 through 70A.65.280 report to ecology, in a form and manner prescribed by ecology, the information required for ecology to carry out these duties.

(2) The annual report is required to identify, at a minimum:

(a) The recipient of the funding.

- (b) The amount of the funding.
- (c) The purpose of the funding.
- (d) The actual end result or use of the funding.

(e) Whether the project that received the funding produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions.

(3) For projects that produce verifiable reductions in greenhouse gas emissions or other long-term impacts to emissions, the annual report must also identify:

- (a) The quantity of reduced greenhouse gas emissions.
- (b) The cost of the reduced greenhouse gas emissions, per metric ton of carbon dioxide equivalent.
- (c) A comparison to other greenhouse gas emissions reduction projects.

(4) During the 2023-2025 fiscal biennium, RCW 70A.65.030(4) requires agencies to coordinate with ecology and the office of financial management regarding the allocation of funds from the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the climate investment account, the air quality and health disparities improvement account, the climate transit programs account, and the climate active transportation account, as needed to achieve the following:

At least 35 percent (and a goal of 40 percent) of total statewide spending from these accounts must provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

(5) Beginning in the 2025-2027 fiscal biennium, RCW 70A.65.030(1) requires that each year or biennium, as appropriate, each state agency allocating funds from the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the climate investment account, the air quality and health disparities improvement account, the climate transit programs account, and/or the climate active transportation account must achieve the following:

At least 35 percent (and a goal of 40 percent) of the agency's total investments from these accounts must provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

(6) In RCW 70A.65.230, the legislature stated its intent that each year the total investments made through the carbon emissions reduction account, the climate commitment account, the natural climate solutions account, the air quality and health disparities improvement account, the climate transit programs account, and the climate active transportation account achieve the following:

- (a) At least 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.
- (b) At least 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe.

(7) The state's omnibus operating appropriations act for the 2023-2025 biennium (section 302(13), chapter 475, Laws of 2023), requires ecology to develop and implement a process to track, summarize and report on state agency expenditures from Climate Commitment Act accounts. This process must enable ecology to track and report on the following information, at a minimum:

(a) The amount of each expenditure that provides direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities;

(b) An explanation of how the expenditure provides such benefits;

(c) The methods by which overburdened communities and vulnerable populations were identified by the agency and an explanation of the outcomes of those identification processes, including the geographic location impacted by the expenditure where relevant, and the geographic boundaries of overburdened communities identified by the agency;

(d) The amount of each expenditure used for programs, activities, or projects formally supported by a resolution of an Indian tribe; and

(e) For expenditures that neither provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities nor are formally supported by a resolution of an Indian tribe, an explanation of why.

(8) Ecology must include a summary of the information described in subsection (7) of this section in a report to the appropriate committees of the legislature.

(9) Ecology will make reports to the legislature available to the public on its website. Data contained in ecology's reports to the legislature will be made available through an online data dashboard.

NEW SECTION

WAC 173-446B-020 What definitions apply to terms used in this chapter? The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. For those terms not listed in this section, the definitions found in chapter 70A.65 RCW apply in this chapter.

(1) "Appropriation" means a single line-item of funding provided by the Washington state legislature to a state agency or other entity, as set forth in an enacted omnibus operating, omnibus capital, or omnibus transportation appropriations act, where such funding is distributed from one of the Climate Commitment Act accounts.

(2) "Climate Commitment Act accounts" or "CCA accounts" means the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, the climate active transportation account created in RCW 46.68.490, and any other state treasury account(s) the legislature establishes specifically for the deposit of proceeds from the auction of allowances authorized in chapter 70A.65 RCW.

(3) "Direct and meaningful benefits" means benefits that are achieved through:

(a) The direct reduction of environmental burdens in overburdened communities;

(b) The reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change;

(c) The support of community led project development, planning, and participation costs; or

(d) Meeting a community need identified by the community that is consistent with the intent of chapter 70A.65 RCW or RCW 70A.02.010.

(4) "Expenditure" means the actual end result or use of funds received through an appropriation of funding from one of the Climate Commitment Act accounts. A single appropriation may be used by a recipient to fund multiple distinct expenditures.

(5) "Greenhouse gas" or "GHG" has the same meaning as in chapter 173-441 WAC.

(6) "Long-term impact to emissions" means emissions reductions calculated using methods described in WAC 173-446B-060.

(7) "Overburdened community" has the same meaning as in RCW 70A.65.010.

(8) "Recipient" means the state agency or other entity that received an appropriation of funding from one of the Climate Commitment Act accounts, irrespective of whether the state agency or other entity subsequently provides any of the funding to another entity.

(9) "Subrecipient" means an entity that received pass-through funding from a recipient. Subrecipients are not directly subject to the requirements of this rule, but recipients may include reporting requirements in their contracts with subrecipients to assist the recipients in complying with reporting obligations.

(10) "Vulnerable populations" has the same meaning as in RCW 70A.02.010.

NEW SECTION

WAC 173-446B-030 How and when must recipients provide their data to ecology? By June 30th of each year, ecology will notify recipients of the manner and date by which they must submit their data for the upcoming fiscal year.

NEW SECTION

WAC 173-446B-040 For which expenditures must recipients report whether the funding will produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions? (1) A recipient must report whether an expenditure is expected to produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions if ecology has approved a methodology and calculator tool for an applicable expenditure category, as described in WAC 173-446B-060.

(2) Expenditures that are not required to report whether the funding will produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions may include, but are not limited to, those that involve only:

- (a) Building awareness in or educating a community.
- (b) Clean energy workforce development.
- (c) Conducting administrative appeals.
- (d) Conducting outreach in communities.
- (e) Conducting research.
- (f) Creating plans for future activities.
- (g) Enhancing a recipient's or other entity's capacity to fulfill its mission.
- (h) Enhancing or maintaining emergency response systems or procedures.

- (i) Hiring agency staff.
- (j) Providing technical assistance.
- (k) Training new employees, sharing knowledge among staff, or building employees' skills.

NEW SECTION

- WAC 173-446B-050 What information are recipients required to provide to ecology?** (1) For each appropriation, recipients must provide the following information:
- (a) What is the appropriation title?
 - (b) What is the purpose of the appropriation?
 - (c) What is the geographic location of the appropriation (if not reported under subsection (2) of this section)? If the appropriation is spent directly by the recipient in multiple locations, provide each location and the amount spent at each location.
 - (d) How much total funding did the legislature provide from CCA accounts for this appropriation?
 - (e) From which CCA account(s) was the funding appropriated?
 - (f) How much of the appropriation was expended?
 - (g) How much and what percent of the expenditure provided direct and meaningful benefits, as defined in WAC 173-446B-020, to vulnerable populations within the boundaries of an overburdened community?
 - (i) What benefits were provided and how did the expenditure provide those benefits?
 - (ii) Which overburdened community was impacted by the expenditure?
 - (iii) How were members of vulnerable populations within the overburdened community involved in determining and measuring the benefits provided?
 - (iv) Provide any relevant and available qualitative information collected through engagement with vulnerable populations within the overburdened community.
 - (h) Was the expenditure formally supported by a tribal resolution? If so, which tribe or tribes formally supported the expenditure by resolution?
 - (i) For expenditures that do not provide direct and meaningful benefits to vulnerable populations in overburdened communities, and are not formally supported by a tribal resolution, explain why.
 - (j) Is this expenditure expected to produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, as described in WAC 173-446B-040?
 - (i) If so, what is the projected quantity of reduced greenhouse gas emissions (carbon dioxide equivalent) to be produced by the expenditure?
 - (ii) If so, what is the estimated cost per carbon dioxide equivalent metric ton of greenhouse gas reduced?
 - (iii) For expenditures not reporting on any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, indicate which category, if any, in WAC 173-446B-040(2) describes this expenditure.
- (2) Recipients that pass funding through to a subrecipient must also provide the following information for each funding agreement including, but not limited to, grants, contracts, loans, or interagency agreements:

- (a) What appropriation title is the funding agreement funded by?
- (b) What is the purpose of the funding agreement?
- (c) What is the geographic location impacted by the funding agreement?
- (d) How much of the appropriation's funding is allocated to this funding agreement?
- (e) How much of the appropriation has been expended through the funding agreement?
- (f) What is the name of the subrecipient?
- (g) How much and what percent of the funding agreement provided direct and meaningful benefits, as defined in WAC 173-446B-020, to vulnerable populations within the boundaries of an overburdened community?
- (i) What benefits were provided and how did the funding agreement provide those benefits?
- (ii) Which overburdened community was impacted by the funding agreement?
- (iii) How were members of vulnerable populations within the overburdened community involved in determining and measuring the benefits provided?
- (iv) Provide any relevant and available qualitative information collected through engagement with vulnerable populations within the overburdened community.
- (h) Was this funding agreement formally supported by a tribal resolution? If so, which tribe or tribes supported the funding agreement by resolution?
- (i) For funding agreements that do not provide direct and meaningful benefits to vulnerable populations in overburdened communities, and are not formally supported by a tribal resolution, explain why.
- (j) Is this funding agreement expected to produce any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, as described in WAC 173-446B-040?
- (i) If so, what is the projected quantity of reduced greenhouse gas emissions (carbon dioxide equivalent) to be produced by the funding agreement?
- (ii) If so, what is the estimated cost per carbon dioxide equivalent metric ton of greenhouse gas reduced?
- (iii) For funding agreements not reporting on any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, indicate which category, if any, in WAC 173-446B-040(2) describes this expenditure.
- (3) Recipients reporting on funding agreements or other expenditures that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities must provide the following additional information:
- (a) Describe the process(es) and/or method(s) (including data sources, mapping tools, and/or community consultation) by which the recipient identified overburdened communities and vulnerable populations.
- (b) Explain the outcomes of the identification process(es) described in (a) of this subsection.
- (c) Provide the geographic boundaries of overburdened communities and characteristics of vulnerable populations the recipient identified.
- (4) If a recipient conducts ongoing tracking or monitoring for an expenditure included in prior annual reports, such as receiving periodic status reports, the recipient shall provide a summary of this in-

formation to ecology in each subsequent annual report until such tracking or monitoring ends. This information must include:

- (a) An explanation of whether the expenditure has been implemented as planned.
- (b) Any changes to previously reported reductions of greenhouse gas emissions.
- (c) Any changes to previously reported direct and meaningful benefits to vulnerable populations in overburdened communities.
- (5) Recipients funding expenditures with appropriations from the climate investment account established in RCW 70A.65.250 must additionally provide any available information related to the quantity and quality of jobs, apprenticeships, and/or internships created, if any, as a result of the expenditure(s) funded by the appropriation.
- (6) If the recipient or a subrecipient is a tribe, this rule does not require the recipient to provide ecology with data that the tribe deems to be culturally sensitive information, confidential proprietary information, or intellectual property.

NEW SECTION

WAC 173-446B-060 How will ecology specify methods for recipients to calculate emissions reductions from expenditures that produce verifiable reductions in greenhouse gas emissions or other long-term impact(s) to emissions?

(1) For each category of expenditure that is expected to produce verifiable reductions in greenhouse gas emissions or other long-term impact(s) to emissions, ecology will, in consultation with the recipient, either:

- (a) Identify the appropriate California air resources board methodology and calculator tool for use in calculating emissions reductions, and adapt the inputs used in the methodology and calculator tool as needed to be appropriate for use in Washington;
- (b) Adapt a California air resources board methodology and calculator tool to make it appropriate;
- (c) Develop an appropriate methodology; or
- (d) Locate a methodology from another source that is of the same or better quality than methods provided by the California air resources board.

(2) Ecology will approve methodologies and calculator tools and post them on its website for use by recipients for the purposes described in this section.

(3) If a recipient expects their expenditure(s) will produce emissions reductions, but ecology has not approved a methodology and calculator tool for an applicable expenditure category, the recipient must notify ecology.