

## WSR 22-13-026

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 21-06—Filed June 3, 2022, 2:17 p.m.]

Continuance of WSR 22-11-067.

Preproposal statement of inquiry was filed as WSR 21-16-111.

Title of Rule and Other Identifying Information: The rule making is proposing new chapter 173-446 WAC, Climate Commitment Act program. The purpose of this new chapter is to establish and implement the programmatic framework in the Climate Commitment Act (Greenhouse gas (GHG) emissions—Cap-and-invest program, E2SSB 5126, chapter 316, Laws of 2021, codified as chapter 70A.65 RCW).

This CR-102 continuance filing:

- Extends the comment period to July 15, 2022; and
- Announces the availability of a revised preliminary regulatory analysis that corrects a previous calculation error.

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

For more information on this rule making, including hearing dates and proposed rule language, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>.

Date of Intended Adoption: September 29, 2022.

Submit Written Comments to: Joshua Grice, Send US mail to: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to: Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email [ecyreclimaterules@ecy.wa.gov](mailto:ecyreclimaterules@ecy.wa.gov), online <https://aq.ecology.commentinput.com/?id=6Nx2J>, by July 15, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, for Washington relay service or TTY call 711 or 877-833-6341, email [ecyADACoordinator@ecy.wa.gov](mailto:ecyADACoordinator@ecy.wa.gov), visit <https://ecology.wa.gov/accessibility> for more information, by June 16, 2022.

Statutory Authority for Adoption: RCW 70A.65.220 Adoption of rules.

Statute Being Implemented: RCW 70A.65.060 through 70A.65.210 (Climate Commitment Act—Cap and invest program).

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: Kay Shirey, Lacey, Washington, 564-200-2372; Implementation and Enforcement: Luke Martland, Lacey, Washington, 360-764-3666.

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 Joshua Grice, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-6566, for Washington relay service or TTY call 711 or 877-833-6341, email [ecyreclimaterules@ecy.wa.gov](mailto:ecyreclimaterules@ecy.wa.gov), the cost-benefit analysis is included in the revised preliminary regulatory analysis. This revised report corrects a previous calculation error that resulted in overestimation of costs and benefits, each by the same amount. In the previous version of this report, allowance prices were inadvertently applied to no cost

allowances, resulting in identically higher allowance purchase costs and allowance market revenues. This correction does not result from a change in the proposed rule language, and does not impact net benefits or the conclusions. The revised preliminary regulatory analysis is available at <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>.

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 revised preliminary regulatory analysis includes corrected calculations to costs and benefits; the small business economic impact statement (SBEIS) was also revised to be consistent with these corrected calculations. The revised preliminary regulatory analysis is available at <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>.

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

The analyses required under the Regulatory Fairness Act (RFA), and their inclusion in an SBEIS, are based on whether the proposed rule would impose compliance costs on small businesses. A rule is otherwise exempt from these analyses under RCW 19.85.025(4).

Based on available information, we did not identify any small businesses that would be covered entities and therefore required to comply with the proposed rule. The average business that is likely to be a covered entity under the proposed rule employs 19,273 people. However, we do not have full information concerning all potential covered entities. For example, about half of the 50-60 expected electric power entities (EPEs) that would potentially start reporting under recent amendments to the GHG reporting rule (chapter 173-441 WAC), would also be covered entities. Based on the size of other covered entities, we do not expect these EPEs to be small businesses.

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

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

June 3, 2022  
Heather R. Bartlett  
Deputy Director