

# Chapter 173-446 WAC:

## Proposed Rule Topic Overview

Ecology's proposed rule in Chapter 173-446 WAC outlines the structure and specific parameters of the cap-and-invest program established in the Climate Commitment Act (CCA). To assist the Environmental Justice Council in its review and development of recommendations on the proposed rule, we have developed an outline by topic of the rule. Per the Council's request, we have also included links to more information, including the preliminary draft rule language and webinar slides shared during the informal public engagement period that helped shape the proposed rule, as well as the formally proposed draft rule language published on our website May 17, 2022. All of these resources can also be found on the [Chapter 173-446 WAC rulemaking webpage](#).

### Topics addressed in Chapter 173-446 WAC

The proposed rule addresses the topics listed below. For each topic, we have indicated where in the draft language those provisions can be found. There is also a full table of contents for this rule at the end of this document. Unfortunately, we are unable to hyperlink directly to the relevant section because the draft rule is one large text document. However, using CTRL+F to search the rule text for these section numbers may help to navigate the document more quickly.

- Cap-and-invest program coverage, registration, and account requirements
  - WAC 173-446, Sections 030 through 150
- Methods and procedures for allocating no-cost allowances
  - WAC 173-446, Sections 220 through 240
  - Please note that the Climate Commitment Act already requires that three entity types – [emissions-intensive, trade exposed entities \(EITEs\)](#), natural gas utilities, and electric utilities – must receive allowances “at no cost” under the cap-and-invest program. This aspect of allowance allocation is not a decision for Ecology in this rulemaking, as it is already set by statute.
    - [RCW 70A.65.110: Allocation of allowances to emissions-intensive, trade-exposed industries.](#)
    - [RCW 70A.65.120: Allocation of allowances to electric utilities.](#)
    - [RCW 70A.65.130: Allocation of allowances to natural gas utilities.](#)
  - This rulemaking addresses only the methods and procedures used to determine the allocation schedule of no-cost allowances for these specific entities per the statutory direction.
- Allowance budgets for covered entities during the first compliance period (2023–2026) and distribution of allowances

- WAC 173-446, Sections 200 through 210 and Sections 250 through 260
- Allowance budgets are based on emissions data from the greenhouse gas (GHG) Reporting program (2015-2019) and other sources specified by the Legislature. The proposed allowance budgets are designed to reduce GHG emissions as needed to meet the covered entities' collective proportional share of the state's GHG limits as directed by the Legislature. Roughly, 75% of WA state GHG emissions are covered under the cap-and-invest program.
- Auction registration requirements
  - WAC 173-446, Sections 300 through 330
- Auction floor price, allowance price containment reserve tier prices, and auction ceiling price
  - WAC 173-446, Sections 335 and 370
  - These price controls are required by statute and were set based on economic modeling by Vivid Economics.
- Emissions containment reserve
  - WAC 173-446, Sections 340 and 375
- Price ceiling units
  - WAC 173-446, Sections 380 through 385
- Procedures and protocols for offset projects that generate offset credits
  - WAC 173-446, Sections 500 through 595
  - The incorporation of offsets, generally, in the cap-and-invest program, and the amount of an entity's compliance obligation that can be covered with offset credits for the first two compliance periods, is set in statute and is not subject to change by Ecology during this rulemaking.
    - The statute also sets the quality bar for offset projects: they must result in GHG emission reductions or removals that are real, permanent, quantifiable, verifiable, and enforceable, and they must provide direct environmental benefits in the state or be located in a linked jurisdiction. In order to generate valid offset credits, offset projects must also result in emission reductions or removals that are additional to what is already required by law or would otherwise occur under a business-as-usual scenario. In addition, the statute ensures that the use of offset credits for compliance under Washington's program will not allow for an increase in emissions above the cap.
    - [RCW 70A.65.170: Offsets. \(wa.gov\)](#)
  - The proposed rule does clarify some statutory language around the use of offset credits and sets limits on the amount of offset credits that can be used for compliance purposes for the remaining five compliance periods, 2031-2050. These proposed limits mirror the limits in the CCA for the second compliance

period as follows: Entities can cover up to 4% of their compliance obligation with offset credits, and can cover an additional 2% of their obligation with credits from projects on federally recognized Tribal lands (WAC 173-446, Section 6(6)).

- The proposed rule also includes the adoption of four offset protocols from the California Air Resources Board (CARB) program (WAC 173-446, Section 505).
  - Ecology is proposing to adopt these protocols because, among other things, it is the most efficient way to incorporate offset projects into the program when the program launches. The adoption of additional Washington-specific protocols will require additional rulemaking.
  - Types of offset projects that fall under the protocols proposed for adoption include: improved forest management, avoided forest conversion, reforestation, manure management on swine and dairy farms, urban tree planting and maintenance, and the destruction of ozone depleting substances.
- Enforcement provisions
  - WAC 173-446, Sections 600 through 620
  - The Climate Commitment Act includes enforcement provisions designed to incentivize covered entities to report timely and accurate emissions data, and to remit adequate compliance instruments to Ecology in a timely manner.
    - Under the Climate Commitment Act, an entity that fails to submit compliance instruments sufficient to cover its compliance obligation by the appropriate deadline will be required to submit four penalty allowances for each allowance not submitted on time. Penalty allowances must be submitted within six months of the original deadline.
    - If an entity fails to submit penalty allowances, and depending on the type and cause of a violation, it can be fined up to \$10,000 - \$50,000 per violation, per day under the Climate Commitment Act.
      - [RCW 70A.65.200: Enforcement—Penalty. \(wa.gov\)](#)
  - The CCA also authorizes Ecology to cancel or reject an application for auction participation if the applicant violates certain requirements, and makes it clear that such violations are also subject to other applicable federal and state laws, including those in chapter 19.86 RCW (state consumer protection law).
    - Section 8 of [RCW 70A.65.100: Auctions of allowances.](#)
  - In addition, the proposed Chapter 173-446 rule includes a provision allowing Ecology to cancel or restrict a previously approved auction participation application or reject a new application if Ecology determines that a registered entity has:
    - Provided false or misleading information;
    - Withheld material information that could influence an Ecology decision;

- Violated any part of the auction rules;
  - Violated registration requirements;
  - Violated any of the rules regarding the conduct of the auction;
  - Coordinated bidding strategy of more than one auction participant; or
  - Disclosed auction-related information, such as bidding strategy.
- Procedures for the transfer and sale of allowances and recognition of compliance instruments
    - WAC 173-446, Sections 400 through 440
  - Rulemaking webpage: [WAC 173-446 - Washington State Department of Ecology](https://ecology.wa.gov/DOE/files/4f/4ffb375b-2bec-4b66-afb3-9b613645896e.pdf)
  - Proposed draft language, released May 17, 2022: <https://ecology.wa.gov/DOE/files/4f/4ffb375b-2bec-4b66-afb3-9b613645896e.pdf>
  - Preliminary draft language from the previous informal public engagement period, released January 11, 2022: <https://ecology.wa.gov/DOE/files/ad/add4891c-0c4e-4253-a784-d02051c77633.pdf>
  - Informational webinar slides (from the informal public engagement period, based on preliminary draft rule language): [https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/AQ/WAC173-446\\_-21-06/Presentation-WAC-173-446-1-11-22](https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/AQ/WAC173-446_-21-06/Presentation-WAC-173-446-1-11-22)
  - You can also request a copy of a recorded webinar explaining the preliminary draft rule language by reaching out to Sierra Rotakhina at [Sierra.Rotakhina@ejc.wa.gov](mailto:Sierra.Rotakhina@ejc.wa.gov).
    - We will share with the Council any new educational resources that become available or events scheduled related to our proposed rule language released May 17, 2022.

## Topics addressed elsewhere

The following topics are not addressed by this rulemaking. For each topic noted below, we have included reference and links to resources for more information. :

### **Already Addressed Under the CCA (Set in state law by the Legislature)**

- *No-cost allowances for emissions-intensive, trade-exposed entities (EITEs)*
  - Under the CCA, EITEs are one of three categories of entities (along with natural gas and electric utilities) designated by the Legislature to be allocated no-cost allowances. Covered entities in these three categories can use these allowances to cover some, or all, of their compliance obligations. This approach to EITE's in the cap-and-invest program is established in statute, and is not addressed by the current rulemaking, except as noted below:

- The Chapter 173-446 rule adds detail and clarity to the more general statutory requirements, including those concerning allocation baselines and distribution of no-cost allowances. The percentage of an EITE's emissions that is covered by no-cost allowances is already outlined in the CCA and is not part of this rulemaking.
- The CCA outlines a separate compliance pathway in the first three compliance periods to allow EITEs to invest in decarbonization early while maintaining industry and employment in our state with a goal of avoiding pushing GHG emissions and other air pollution to other states or countries.
- The CCA also specifies that if an EITE's emissions for a compliance period exceed the number of no-cost allowances it has been allocated, it must obtain additional compliance instruments to meet its full compliance obligation.
- No-cost allowances for EITEs in the CCA: [RCW 70A.65.110: Allocation of allowances to emissions-intensive, trade-exposed industries.](#)
- More information on EITEs in the CCA: [Emissions Intensive Trade Exposed industries - Washington State Department of Ecology](#)
- *Limitations on use of offsets to cover emitters' compliance obligation*
  - The possibility of using of offset credits under the cap-and-invest program is established in the CCA statute and is not subject to change by Ecology in this rulemaking. The CCA also outlines the limitations on the use of offset credits for the first two compliance periods.
    - In the first period, 2023-2026, participating entities can cover up to 5% of their compliance obligation with offset credits, and can cover an additional 3% of their obligation with credits from projects on federally recognized Tribal lands.
    - In the second period, 2027-2030, participating entities can cover up to 4% of their compliance obligation with offset credits, and can cover an additional 2% of their obligation with credits from projects on federally recognized Tribal lands.
      - Section 3(a-b, e) of [RCW 70A.65.170: Offsets. \(wa.gov\)](#)
    - The CCA also designates \$5 million per biennium from auction proceeds to fund a grant program to support the development of offset projects on federally recognized Tribal lands.
      - [RCW 70A.65.180: Assistance program for offsets on tribal lands. \(wa.gov\)](#)
    - Under the CCA, Ecology is directed to limit the use of offset credits by EITEs so that the sum total of their allocated no-cost allowances plus allowable offset credits does not exceed 100% of the entity's compliance obligation for the compliance period.

- Section 5 of [RCW 70A.65.110: Allocation of allowances to emissions-intensive, trade-exposed industries.](#)
- The CCA also stipulates that Ecology may limit the use of offset credits by a specific entity if:
  - The entity violates any permits required by any federal, state, or local air pollution control agency where the violation may result in an increase in emissions; or
  - If it is determined, in consultation with the Council, that the entity's operations do, or are likely to, contribute substantively to cumulative air pollution burden in an overburdened community.
  - Section 3(d)(i-ii) of [RCW 70A.65.170: Offsets. \(wa.gov\)](#)

## **To Be Addressed Under Separate Processes and Rulemakings**

- *The Improving Air Quality in Overburdened Communities initiative*
  - Input and insight from the Council is crucial on this initiative to shape the criteria for the identification of overburdened communities highly impacted by air pollution.
  - This initiative arises from a specific section of the CCA statute and is not addressed by the Chapter 173-446 rulemaking. The work currently being done under this initiative is not subject to the rulemaking process, but will include multiple opportunities for public input and engagement. In January through April, Ecology held an initial informal public engagement period, including listening sessions, for this process. The team working on this initiative will be holding a second informal public engagement period starting in June to receive input on the draft criteria for the identification of overburdened communities highly impacted by air pollution in our state.
    - [RCW 70A.65.020: Environmental justice review. \(wa.gov\)](#)
  - In June 2022, we anticipate making the following items available to the public as part of the second public engagement period: our draft criteria, a map of initial screening areas based on those criteria, and information about the resources used to develop those criteria. At that time, Ecology will hold a second informal public engagement period to receive feedback on these materials. However, we first intend to share these items with the Council, enabling us to incorporate your feedback prior to our announcement of the public process schedule.
  - By the end of the summer, the team will review and incorporate comments and publish the final list of criteria and the final list of identified overburdened communities highly impacted by air pollution.
  - In the fall, once the list of overburdened communities highly impacted by air pollution are identified, Ecology will begin placing expanded air quality monitoring networks in those areas to get more information about the specific nature of the air

quality issues being experienced. Ecology will share the factors considered and how that information influenced or affected the locations for expanded monitoring.. Ecology looks forward to collaborating with the Council on the approach and establishment of expanded air quality monitoring.

- In later 2023, the Air Quality team working on this initiative will begin developing new emissions-reduction strategies. This will involve further public review and input. Ecology will look to the Council for recommendations on both the development of the public process and the resulting emissions-reduction strategies.
- The development of the Climate Commitment Act supplemental Community Engagement Plan which will cover how the Department conducts outreach to environmental justice communities regarding implementation of the Act is also part of this initiative. Ecology has begun developing this plan with Ecology's Office of Equity and Environmental Justice and the agency Tribal Liaison. This Plan includes best practices for engagement with environmental justice communities, including language access, meetings that meet different work schedules, multiple ways to give input, and approachable educational materials. The Air Quality team looks forward to feedback from the Council on components of this plan.
- The CCA directive that establishes the Improving Air Quality in Overburdened Communities initiative (though it is not named as such in statute) and directs Ecology to develop a supplemental Community Engagement Plan: Section 7 of [RCW 70A.65.020: Environmental justice review. \(wa.gov\)](#)
- Improving Air Quality in Overburdened Communities initiative webpage: [Overburdened communities - Washington State Department of Ecology](#)
- More info and interactive Storymap survey: [Improving Air Quality in Overburdened Communities \(arccgis.com\)](#)
- *Designating new EITE facilities after 2027*
  - Under the CCA, certain industries are designated as emissions-intensive, trade exposed. A full list of these industries and their corresponding NAICS codes in the CCA are found in Section 1(a-m) of [RCW 70A.65.110: Allocation of allowances to emissions-intensive, trade-exposed industries.](#)
  - The CCA also requires Ecology to adopt rules outlining the criteria and process for designating new EITE facilities. The rulemaking process to implement this statutory directive is separate from the Chapter 173-446 WAC rulemaking.
    - Chapter 173-446A WAC was proposed on December 22, 2021. The formal comment period ended on February 1, 2022 and Ecology anticipates adoption of this rule in June 2022.
    - Chapter 173-446A WAC only applies to the designation of new EITE industries not included in the original list of NAICS codes. If a facility in Washington reports under a NAICS code not on the CCA list (which can also be found in Table 030-1 of the [Chapter 173-446A rule language](#)), and that



facility wishes to be designated as an EITE in order to receive no-cost allowances, it must petition Ecology as outlined in Chapter 173-446A.

- The Environmental Justice Council may provide recommendations to Ecology on these petitions based on the Council's assessment of the potential impact of these facilities on air quality in overburdened communities, as defined in the CCA (Section 54 of [RCW 70A.65.010: Definitions. \(wa.gov\)](#)).
- Chapter 173-446A WAC Rulemaking webpage: [WAC 173-446A - Washington State Department of Ecology](#)
- Chapter 173-446A WAC Proposed draft language: [https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/AQ/WAC173-446A\\_-21-05/Rulemaking-proposed-language-WAC-173-446A-12-22-21](https://ecology.wa.gov/Asset-Collections/Doc-Assets/Rulemaking/AQ/WAC173-446A_-21-05/Rulemaking-proposed-language-WAC-173-446A-12-22-21)
- Informational webinar slides: [Presentation for 9/21/21 stakeholder meeting about Chapter 173-446A WAC, Criteria for Emissions-Intensive, Trade-Exposed Industries](#)
- You can also request a copy of a recorded webinar by reaching out to Sierra Rotakhina at [Sierra.Rotakhina@ejc.wa.gov](mailto:Sierra.Rotakhina@ejc.wa.gov).
- *Environmental Justice Council recommendations on funding appropriation for climate, air quality, and environmental justice projects*
  - Under the CCA, the Council is empowered to provide recommendations to the Legislature on the allocation of auction-generated revenue to fund various climate and air quality projects.
    - Section 7 of [RCW 70A.65.005: Findings—Intent. \(wa.gov\)](#)
  - The specific mechanisms for how the Council will provide these recommendations have not been established yet. State agencies and the Governor's Office are committed to engaging the EJ Council as the Governor's budget proposal for CCA revenue spending is developed.

## Other resources

- Climate Commitment Act Webpage  
[www.ecology.wa.gov/CCA](http://www.ecology.wa.gov/CCA)
- Sign Up for Climate Commitment Act Email Updates  
[https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic\\_id=WAECY\\_15](https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_15)
- Climate Commitment Act Blogs
  - [The Climate Commitment Act: Washington's path to carbon-neutrality by 2050](#)
  - [Meaningful Momentum: CCA updates for March 2022](#)
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- General Rulemaking FAQ  
<https://ecology.wa.gov/Footer/rulemaking/Rulemaking-FAQ>



# Climate Commitment Act Program

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