



Cap-and-Invest Program Agency Request Legislation

**An Environmental Justice Assessment (per RCW
70A.02.060)**

For the

Climate Pollution Reduction Program

Washington State Department of Ecology
Olympia, Washington

January 2024, Publication 24-14-001

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¹ www.ecology.wa.gov/contact

Language Access

Under the state Environmental Justice law (RCW 70A.02), Ecology is required to conduct Environmental Justice Assessments during development of certain significant actions. This Assessment provides information about the potential impacts to overburdened communities and vulnerable populations, and strategies to mitigate identified harms and fairly distribute known benefits. For translation, interpretation, or accessibility assistance, please contact Courtney Cecale at courtney.cecale@ecy.wa.gov or (360) 480-6270.

Bajo la ley estatal de Justicia Medioambiental (RCW 70A.02), Ecología está obligada a realizar Evaluaciones de Justicia Medioambiental durante el desarrollo de ciertas medidas importantes. Esta evaluación proporciona información sobre los posibles impactos en las comunidades sobrecargadas y las poblaciones vulnerables, y las estrategias para mitigar los daños identificados y distribuir justamente los beneficios conocidos. Para asistencia de traducción, interpretación o accesibilidad, por favor póngase en contacto con Courtney Cecale escribiendo a courtney.cecale@ecy.wa.gov o llamando al (360) 480-6270.

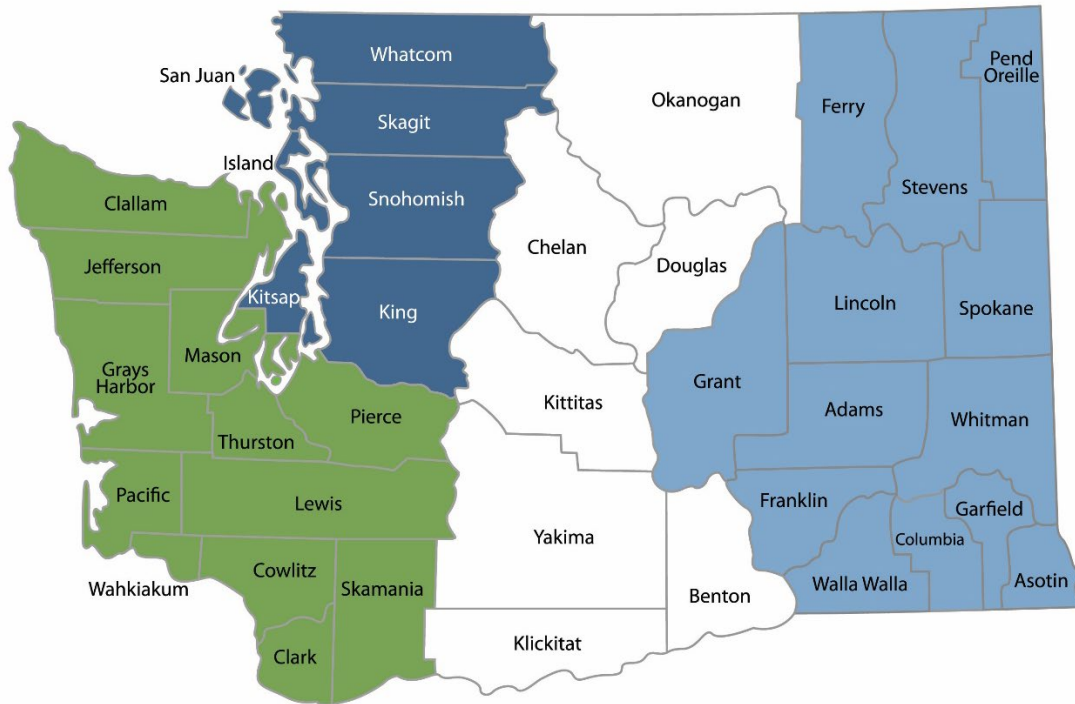
根据华盛顿州环境正义法(RCW 70A.02)，生态管理署在制定某些重大行动时必须进行环境正义评估。该评估需提供对负担过重社区和弱势群体潜在影响的信息，以及减轻已明确的危害和公平分配已知利益的策略。如需笔译、口译或无障碍协助，请联系 Courtney Cecale，电子邮件：courtney.cecale@ecy.wa.gov或电话 (360) 480-6270。

Theo luật Công Bằng Môi Trường của tiểu bang (RCW 70A.02), Bộ Môi Sinh được yêu cầu tiến hành Đánh Giá Công Bằng Môi Trường trong quá trình triển khai một số hành động quan trọng. Đánh giá này cung cấp thông tin về các tác động tiềm ẩn đối với các cộng đồng đang chịu tổn hại và các nhóm dân cư dễ bị tổn hại cũng như các chiến lược nhằm giảm thiểu tác hại đã xác định và phân chia công bằng các lợi ích đã biết. Để được hỗ trợ về thông dịch, giải thích hoặc sự giúp đỡ cho người khuyết tật, vui lòng liên hệ với Courtney Cecale theo địa chỉ courtney.cecale@ecy.wa.gov hoặc (360) 480-6270.

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Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region 360-407-6300	Northwest Region 206-594-0000	Central Region 509-575-2490	Eastern Region 509-329-3400
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Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	P.O. Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	P.O. Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 West Alder Street Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 North Monroe Spokane, WA 99205	509-329-3400
Headquarters	Statewide	P.O. Box 46700 Olympia, WA 98504	360-407-6000

Cap-and-Invest Program Agency Request Legislation

An Environmental Justice Assessment (per RCW 70A.02.060)²

Climate Pollution Reduction Program
Washington State Department of Ecology
Olympia, WA

January 2024 | Publication 24-14-001



DEPARTMENT OF
ECOLOGY
State of Washington

² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true#70A.02.060>

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Executive Summary

The Department of Ecology (Ecology) is proposing legislation that would modify Washington State's cap-and-invest program to allow linking Washington's carbon market with the joint California-Québec market, and to improve the functioning of Washington's market. The proposed legislation includes changes to allowance purchase and holding limits, offset credits, electricity reporting and imports, and other provisions. This Environmental Justice Assessment was initiated on October 19, 2023 and was open for public comment through December 31, 2023.

Ecology modified the proposed legislation during the comment period, based on feedback from stakeholders, discussions with legislations, and continued analysis and information gathering. We expect the proposal will continue to change as it moves through the legislative process. This Environmental Justice Assessment covers proposals considered by Ecology for the first and second draft of the bill request.³

Cap-and-invest is a statewide program and as a result, the agency request legislation may have impacts across the state. Ecology has reviewed the possible impacts of the proposals, and has not identified significant impacts to overburdened communities and vulnerable populations from the request legislation.

Ecology identified all federally recognized Tribes with lands and territories in Washington or Tribes with usual and accustomed land in Washington as potentially affected by the proposal and contacted their chairpersons and natural resources directors to offer consultation and invite them to participate in Tribal forums.

We contacted over 30 environmental justice and community-based organizations around the state serving these communities and populations through our email lists, through direct email and phone outreach, and virtual meetings. We provided the option to provide verbal or written comments.

We received feedback from several Tribes, eight organizations, and three individuals to inform this Environmental Justice Assessment. Several commented that meaningful engagement with overburdened communities and vulnerable populations is critical, and that the duration of the initial comment period was too short and limited information was available for stakeholders. To address those concerns, Ecology extended the comment deadline and held additional question and answer sessions. Ecology heard the importance of including policies to actively improve air quality in communities with high cumulative air pollution, such as placing pollution limits on certain high-polluting facilities in overburdened communities.

In addition to these comments, we have heard concerns about potential harms related to four provisions of the legislative proposal:

³ Bill request numbers Z-0485.1/24 and Z-0485.2/24

- Offsets credits that can come from linked jurisdictions.
- Allowance purchase limits for covered entities.
- Allowance holding limits for general market participants.
- Authority to modify certain provisions in rule.

Based on feedback received during the engagement period, Ecology removed the proposal expanding Ecology’s authority to accept offset credits that are not located in a linked jurisdiction and modified the proposal related to holding limits.

We heard comments specific to linking carbon markets. Ecology is aware that the potential impacts of linking carbon markets with California and Québec are a concern for many organizations and communities. Since the proposed changes in the agency request legislation do not in themselves constitute linkage, or make linkage inevitable, we focused this assessment on the impacts of the proposals included in the legislation. There will be specific outreach related to linkage itself in 2024 and beyond, and we will complete a linkage-specific Environmental Justice Assessment.

We expect that the proposed legislation will result in net benefits to overburdened communities and vulnerable populations. We expect the agency request legislation to result in a more efficient and robust cap-and-invest market. Such market will continue to provide benefits to overburdened communities from reducing greenhouse gas and associated emissions and providing stable funding for projects funded with auction revenue.

Program Background Information

Climate Commitment Act

In 2021, the Washington Legislature passed the Climate Commitment Act (CCA), establishing the [cap-and-invest program](#),⁴ a comprehensive, market-based program to reduce carbon pollution and achieve the greenhouse gas emissions limits set in state law.

State law sets limits on overall greenhouse gas emissions in the state. To meet these limits, the CCA directs Ecology to set a cap on emissions from certain entities and requires those entities to obtain compliance instruments (primarily using allowances⁵) equal to their covered greenhouse gas emissions. These allowances can be obtained through [auctions](#)⁶ hosted by Ecology or bought and sold on a secondary market. The cap will be reduced over time to ensure Washington achieves its 2030, 2040, and 2050 emissions-reduction limits, which means Ecology will issue fewer emissions allowances each year.

Since starting in 2023, the allowance auctions have already generated \$1.9 billion of revenue. This revenue will help fund projects to further reduce greenhouse gas emissions, mitigate the impacts of climate change, and reduce criteria pollutants in overburdened communities highly impacted by air pollution across the state.

Linking Carbon Markets

Ecology is currently pursuing linking Washington's cap-and-invest program with California and Québec's carbon market – creating one single carbon market. A [linked cap-and-invest program](#)⁷ would mean that Washington would have joint allowance auctions with California and Québec and all three jurisdictions would share a common allowance price. Market participants could trade allowances across jurisdictions.

The CCA directs Ecology to actively consider linking Washington's cap-and-invest program with other carbon markets and requires that Washington's program be built in such a way that linking would be as seamless as possible. The law also requires Ecology to review specific criteria to ensure linking would benefit our state's communities, economy, and climate goals.

⁴ <https://ecology.wa.gov/air-climate/climate-commitment-act/cap-and-invest>

⁵ A compliance instrument is an allowance or offset credit. One compliance instrument is equal to one metric ton of carbon dioxide equivalent. Entities can use offset credits to meet a limited portion of their compliance obligation – less than 8%.

⁶ <https://ecology.wa.gov/air-climate/climate-commitment-act/cap-and-invest/auctions-and-market>

⁷ <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Cap-and-invest/Linkage>

Proposed Agency Request Legislation

Ecology is proposing to amend provisions of the cap-and-invest program through changes to RCW Chapter [70A.65](https://app.leg.wa.gov/rcw/default.aspx?cite=70A.65)⁸ and [RCW 70A.15.2200](https://app.leg.wa.gov/rcw/default.aspx?cite=70A.15.2200).⁹ Some amendments are necessary to make it possible for Washington's program to link with the joint California-Québec market, while other changes are intended to address administrative issues to improve overall program implementation.

The proposed changes will remove certain barriers to linkage, but do not guarantee that linkage will occur. Linkage can only occur if California, Québec, and Washington all come to an agreement. Potential impacts from linkage will continue to be evaluated as Ecology proceeds through the multi-step process of pursuing linkage, which will include additional Environmental Justice Assessments.

- This Environmental Justice Assessment is being performed to inform Ecology's development of proposed statutory changes for submittal to the Governor's Office as agency-request legislation for the 2024 legislative session.
- Before entering into a linkage agreement, Ecology will need to amend certain provisions of the Climate Commitment Act Program Rule, [Chapter 173-446 WAC](https://app.leg.wa.gov/WAC/default.aspx?cite=173-446).¹⁰ Such a rulemaking will require Ecology to complete another Environmental Justice Assessment to evaluate the impacts that could result from the proposed rule changes.
- Before signing a linkage agreement, Ecology must complete another Environmental Justice Assessment to evaluate the impacts that could result from the specific terms of a proposed linkage agreement.

While the completion of each of these Environmental Justice Assessments is a separate legal obligation, Ecology intends to approach them as an iterative process of engagement and consultation that will continually inform our awareness and understanding of potential impacts as well as potential methods to minimize or eliminate harms and maximize benefits for vulnerable populations and overburdened communities. All of these processes must be complete before Ecology can sign a linkage agreement.

⁸ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.65>

⁹ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.15.2200>

¹⁰ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446>

Environmental Justice Assessment

Purpose of the Environmental Justice Assessment

The Environmental Justice (EJ) Assessment process helps assess the environmental justice impacts of Significant Agency Actions (SAAs). The assessment informs and supports consideration of overburdened communities and vulnerable populations when making decisions. This information assists with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of health disparities.

The EJ assessment process aligns with Washington’s Environmental Justice law called the Healthy Environment for All (HEAL) Act ([RCW 70A.02¹¹](#)), as well as federal commitments in the [Performance Partnership Agreement¹²](#) with the EPA. The assessment process draws on best practices established in [Technical Guidance for Assessing Environmental Justice in Regulatory Analysis¹³](#) and [Promising Practices for EJ Methodologies in NEPA Reviews¹⁴](#).

Environmental justice assessments are to be completed for the following actions:

- The development and adoption of significant legislative rules as defined in RCW.05.32815
- The development and adoption of any new grant or loan program that a covered agency is explicitly authorized or required by statute to carry out
- A capital project, grant, or loan award of at least \$12,000,000 or a transportation project, grant, or loan of at least \$15,000,000
- The submission of agency request legislation to the office of the governor or the office of financial management for approval
- (Covered actions are expected to expand in 2025)

This assessment is not required to be a comprehensive or an exhaustive examination of all potential impacts of a significant agency action and does not require novel quantitative or economic analysis of the proposed significant agency action.

The time and resource investment, and depth of assessment, will be influenced by the reasonable applicability of the questions to the agency action.

This Environmental Justice Assessment is adapted for publication and does not include internal agency process instructions.

¹¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true>

¹² <https://ecology.wa.gov/About-us/Accountability-transparency/Government-coordination/Partnering-with-the-EPA>

¹³ <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>

¹⁴ https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

¹⁵ <http://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328>

Section 1: Background

The information in this section is provided for the Office of Financial Management's [dashboard](#)¹⁶ which includes all covered agency's Environmental Justice Assessment notices.

Descriptive title of project/action:

Carbon market linkage changes

Date EJ Assessment initiated:

October 19, 2023

Ecology Program/Office:

Climate Commitment Act Implementation Group, Climate Pollution Reduction Program

Point of contact for EJ Assessment:

Stephanie Potts, Tamara Jones

Significant Agency Action type, select one or more:

- Rulemaking
- New grant or loan program
- New capital project, grant, or loan of \$12 million or more
- Request legislation
- Other, explain:

Write a short summary of the action.¹⁷

The Department of Ecology is proposing legislation that would modify the cap-and-invest program to facilitate linking Washington's carbon market with the joint California-Québec market, creating a single shared market. The legislation would also make administrative changes to improve the program that are not related to linkage. Parts of the law that might be proposed to be amended include, but are not limited to, changes to allowance purchase limits, auction application timelines, and rulemaking authority.

The proposed changes will remove barriers to linkage, but do not guarantee that linkage will occur. Linkage can only occur if California, Québec, and Washington all agree to link.

Identify the method(s) for the public to comment on this proposed action for this assessment.

The public may comment at any time by visiting the agency webpage below. The Department also hosted two public listening sessions on this agency request legislation on Wednesday, October. 25, at 5 p.m. and Thursday, October. 26, 2023 at 9 a.m. More information on the listening sessions is located on the agency webpage.

¹⁶ <https://ofm.wa.gov/budget/budget-related-information/agency-activities/environmental-justice-assessment-notices>

¹⁷ Ecology updated this short summary of the action after Office of Financial Management posted the information on their dashboard.

<https://ecology.wa.gov/about-us/budget-legislative-priorities/2024-legislative-priorities/carbon-market-linkage>

Comment period was open from October 19 to December 31, 2023.

Create/provide an Ecology webpage with information about this proposed action. Link to webpage: [2024 Agency Request Legislation: Carbon market linkage with California & Québec](#).¹⁸

Section 2: Notification that an Environmental Justice Assessment has been Initiated

This section instructs Ecology staff to notify OFM about the initiation of the action.

Section 3: Identify Affected Tribes

This section summarizes preliminary planning for Tribal Consultation. Ecology must offer consultation with Tribes on significant agency actions that affect federally recognized Tribes' rights and interest in their tribal lands.

Preparing for Tribal Consultation

1. Is the proposed action likely to have any local or regional impacts to federally reserved Tribal rights and resources, including but not limited to, those protected by treaty, executive order, or federal law? Choose one of the following:
 - Yes
 - No
 - Unsure
2. List any federally recognized Tribes that are expected to be affected by the proposed action. If it is determined during consultation that Tribes do not wish to be included, then do not include them.

The CCA specifically allows for federally recognized Tribes to participate in the cap-and-invest program as “opt-in entities” or “general market participants.” Opt-in entities assume a compliance obligation for their emissions as if they were “covered entities.” General market participants have no compliance obligation for their emissions but can buy, sell, and hold allowances and offset credits. One type of general market participant is an offset project operator, who generates and sells offset credits into the market.

¹⁸ <https://ecology.wa.gov/about-us/budget-legislative-priorities/2024-legislative-priorities/carbon-market-linkage>

Since the cap-and-invest program applies statewide, this proposed legislation has the potential to impact all federally recognized Tribes with lands and territories in Washington, as well as federally recognized Tribes whose Tribal Lands are located outside the state but may nevertheless be eligible to participate in the program as offset project operators if offset projects provide direct environmental benefits to the state of.

There are no Tribes that currently have offset projects that generate Washington offset credits. However, Colville Confederated Tribes and Spokane Tribe participate in the California Compliance Offsets Program.¹⁹ As of December 31, 2023, Ecology's Tribal Carbon Offset Assistance Program has awarded 15 grants to support federally recognized Tribes in the process of designing, assessing the feasibility of, and implementing carbon offset projects. All Tribes who applied received complete or partial funding. These funds are intended to help increase the number of offset projects developed on Tribal Lands within Washington, in accordance with RCW 70A.65.180. Ecology expects that the Tribes participating in the California offset program and the Tribes participating in this grant program have a greater level of interest in developing offset projects in the future, and therefore are more likely to be impacted by the bill if passed.

Tribal Carbon Offset Assistance Program grantees

- Jamestown S'Klallam Tribe
- Kalispel Indian Community of the Kalispel Reservation
- Nisqually Indian Tribe
- Puyallup Tribe of Indians
- Quinault Indian Nation
- Makah Indian Tribe of the Makah Indian Reservation
- Snoqualmie Indian Tribe
- Squaxin Island Tribe
- Tulalip Tribes
- Yakama Nation Confederated Tribes

Federally recognized Tribes in Washington and Tribes with usual and accustomed territories in Washington that are not currently Tribal Carbon Offset Assistance Program grantees

- Chehalis Confederated Tribes
- Colville Confederated Tribes
- Cowlitz Tribe
- Hoh Tribe
- Kootenai Tribe
- Lower Elwha Klallam Tribe
- Lummi Nation
- Muckleshoot Tribe
- Nez Perce Tribe
- Nooksack Tribe

¹⁹ <https://ww2.arb.ca.gov/our-work/programs/compliance-offset-program/listing-requirements-tribes>

- Port Gamble S'Klallam Tribe
- Quileute Tribe
- Samish Nation
- Sauk-Suiattle Tribe
- Shoalwater Bay Tribe
- Skokomish Tribe
- Spokane Tribe
- Stillaguamish Tribe
- Suquamish Tribe
- Swinomish Tribe
- Umatilla Confederated Tribes
- Upper Skagit Tribe
- Warm Springs Confederated Tribes

There are no Tribes that currently have a compliance obligation under the cap-and-invest program, and Ecology is not aware of any Tribes in Washington State who intend to participate as opt-in entities in the future. However, out-of-state Tribal corporations may begin delivering electricity to Washington State. If such a Tribal corporation becomes subject to the cap-and-invest program, this proposed legislation could impact the reporting and compliance obligations associated with the electricity they deliver. We did not do specific outreach to any out-of-state Tribal corporations.

3. Describe plans to offer consultation to identified Tribes.

Ecology notified all chairpersons and natural resources directors of the federally recognized Tribes with land, territories, and usual and accustomed land in Washington of the proposal and offered consultation in communications sent on October 19, November 1, and November 2, 2023.

Ecology received feedback that starting Tribal outreach in October and asking for comments by November 8 did not allow adequate time to offer and engage in meaningful consultations. Based on this input, Ecology continued Tribal engagement through December 31, 2023 to allow more time for comments and improve this assessment.

Ecology sent additional notifications to all chairpersons and natural resource directors on November 28, 2023 and December 8, 2023. Ecology staff called the natural resource directors the week of December 7.

In addition to offering Government-to-Government consultation, Ecology also held three Tribal forums on October 24, November 2, and December 11, 2023 to provide information on the legislative proposals, answer questions, and take comments.

At the State-Tribal Climate Roundtables organized by the Governor's office on October 13, November 17, and December 15, 2023, Ecology staff informed Tribal representatives of the proposal and offered consultation and meetings.

Section 4: Offer Consultation:

This section directs Ecology staff to offer consultation with Tribes on significant agency actions that affect federally recognized Tribes' rights and interest in their tribal lands.

Section 5: Summary of Tribal Consultation & Engagement

Tribal consultation is intended to inform the answers to all questions in this section.

Summary of Tribal Consultation

1. Describe potential impacts (including harms and benefits) to federally recognized Tribal rights and interests in their tribal lands.

For the Environmental Justice Assessment for the agency request legislation, Ecology has offered consultation to Tribes through emails to Tribal Chairs and natural resource directors, at State-Tribal Climate Roundtables, and in conversations at the 2023 Centennial Accords. Ecology has also held three Tribal forums to answer questions and hear concerns about the proposed legislation.

Government to Government Consultation and comments from individual tribes

Ecology has had Consultation and engagement with the following Tribe:

- Government-to-Government consultation with the Makah Tribe on December 7, 2023

To respect the confidentiality of the consultation, Ecology will not share specific discussion topics from the interaction. Instead, Ecology incorporated the feedback received during consultations and Tribal meetings into the answers to questions 3 and 4 of this section (on pages 19 and 21).

Tribal forums

On October 19, 2023, Ecology offered federally recognized Tribes consultation as well as an invitation to a Tribal forum hosted on October 24, 2023. The intent of the forum was to answer questions regarding the agency request legislation. There were no registrants for the October 24 forum, likely due to the limited notice.

Ecology hosted two additional Tribal forums on November 2, 2023 and December 11, 2023. During these forums, we shared information on the bill, answered questions, and reiterated our offer of formal consultation at any time. The November 2, 2023 forum provided information about our initial proposal, while the December 11, 2023 forum also explained which portions of the initial proposal were added, removed, or modified after November 2, 2023.

Summary of questions and concerns raised during the November 2 Tribal Forum

Twelve people attended the forum. The attendees included Tribal natural resource directors, natural resources department staff, fisheries staff, other non-Tribal members employed by and representing Tribes, and a Washington Governor's Office of Indian Affairs staff.

Attendees shared the following questions and concerns related to linkage and the agency request legislation. Ecology responded to questions during the forum.

Questions and concerns about linkage:

- General questions regarding impacts of linkage including expected reduction of greenhouse gas emissions in Washington; accounting of how allowances are sold and purchased when linked with the California-Québec market; whether additional entities that are exempt from emission reporting would be added if Washington links.
- Questions and concerns about linkage resulting in lower allowance prices and how that may affect companies' decisions to invest in decarbonization.

Questions related to the policies in the agency request legislation:

- Question about the purpose of netting²⁰ and share how much imported electricity is unspecified electricity.²¹
- Question about offset protocols and whether Washington protocols can be different than those used in California and Québec.

Concerns shared about the agency request legislation (see Ecology's analysis of potential impacts to Tribes below for responses to concerns):

- Concern that the law would still be effective to prevent monopolization if the allowance purchase and holding limits in the CCA are changed.
- Concerns about offset credits coming from other jurisdictions and impacts to benefits to Washington from offset projects, for example by reducing projects providing benefits for salmon recovery.

Attendees also provided general feedback on the Environmental Justice Assessment process and other issues related to the CCA, including the need for more notice before a meeting, additional time for providing comments, requesting Ecology share statutory language when it is available, and more transparency on emissions reporting and data.

²⁰ "Netting" allows for the compliance obligation of electricity imported into the state to be reduced based on the amount of unspecified electricity (electricity of unknown origin) exported out of state at roughly the same time (in the same hour).

²¹ Unspecified electricity is electricity of unknown origin. Unspecified electricity is commonly known as market power and is sold by third-party marketers, independent "merchant" power plants, or by utilities that end up with excess power beyond their immediate needs to serve their customers' electric load.

Summary of questions and concerns raised during the December 11 Tribal Forum

Eighteen people attended the forum. The attendees included Tribal natural resource directors, natural resources department staff, fisheries staff, other non-Tribal members employed by and representing Tribes, and Affiliated Tribes of Northwest Indians staff.

Attendees shared the following questions and concerns related to the CCA, linkage, or the agency request legislation. Ecology responded to questions during the forum.

Questions about the CCA and linkage:

- Question on whether the CCA definition of Tribal lands changed.
- Question regarding whether there is a hierarchy in which offset credit types are used first for compliance.
- Question about the consequences of Washington remaining a standalone carbon market (not linking) and why Ecology seems to believe it is critical to link.

Questions related to the policies in the agency request legislation:

- Question about the provision to remove electricity netting and how it would impact reaching Washington's greenhouse gas limits.
- Question about the impacts of Washington using a separate greenhouse gas reporting system from the U.S. Environmental Protection Agency (EPA). Comment that EPA regulation allows collection of additional data by states.

Concerns shared about the agency request legislation (see Ecology's analysis of potential impacts to Tribes below for responses to concerns):

- Concerns that an outside developer could develop an offset project on federally recognized Tribal land without permission from the Tribal government. Recommended including a provision in the CCA to require Tribal approval for a non-Tribal project on Tribal land.
- Concern that increasing the allowance purchase limit could result in increasing the number of allowances available to emitters and that polluters could therefore pollute more.
- Comment on how Washington's program is currently the most stringent regulation in the nation and concern regarding whether the program would be weakened by Ecology's proposals.

State-Tribal Climate Roundtables

On October 13, 2023 Ecology shared a presentation about linkage at the State-Tribal Climate Roundtable. The primary linkage related concern expressed by multiple Tribes was that linking carbon markets could reduce the costs of allowances which could then reduce the value of

carbon offset credits. A reduction in the value of offset credits may impact a Tribe’s ability to participate in the offset market and earn additional revenue.

On November 17, 2023, Ecology provided a short presentation about the request legislation at the State-Tribal Climate Roundtable. There were minimal questions and comments after the presentation.

On December 15, 2023, Ecology shared another presentation about the request legislation at the State-Tribal Climate Roundtable. It focused on the modifications to the proposed agency request legislation since the previous roundtable on November 17. There were no questions or comments from those who attended the roundtable.

Ecology’s analysis of potential impacts to Tribes

Ecology reviewed the statutory amendments proposed in the agency request legislation in light of the feedback we received in order to analyze the potential impacts, including on Tribes. Based on the analysis summarized below and detailed in Appendix A, Ecology expects the proposed bill will yield net benefits for federally recognized Tribes if passed.

Ecology expects that the proposal to add flexibility for offset projects on Tribal lands (43) would benefit federally recognized Tribes with lands and territories in Washington, as well as other federally recognized Tribes who may be eligible to participate as offset project operators, by allowing a larger proportion of Washington offset credits to come from projects on Tribal lands. See Ecology’s answer to 19 below for additional discussion of this proposed amendment and our conclusion that it would not affect Tribes’ existing authority to determine whether to site offset projects on their Tribal lands.

Ecology also analyzed the concerns raised at the Tribal forums about the agency request legislation.

- Response to concerns related to the impact of the change to allowance purchase and vintage year holding limits: Ecology’s analysis concluded that the proposed changes to the purchase limits and the vintage year specific holding limits will not substantially reduce the law’s ability to prevent monopolization or to reduce greenhouse gas emissions. See Appendix A, proposal 5 and 6 for a thorough discussion of this issue.
- Response to concern about whether allowing offset credits from other jurisdictions would reduce project benefits to Washington: The agency request legislation is not proposing to change the statutory limits on the total number of offset credits that can be used for compliance in Washington. It is also not proposing to change the existing requirements that after linkage, at least 50% of offset credits used during the first compliance period—and at least 75% of offset credits used during the second compliance period—must come from projects that provide direct environmental benefits to Washington. See Appendix A, proposals 1, 2, and 3 for more discussion on this issue.
- Response to concern about outside developers developing offset projects on Tribal lands: Ecology’s CCA program rule, at WAC 173-446-520(3)(e), addresses this issue by requiring that a written agreement be in place between Ecology and the applicable Tribal government before an offset project can be located on any “tribal land, land that is owned

by a tribe, or land that is subject to an ownership or possessory interest of a tribe.” See Ecology’s answer to 19 for a thorough discussion of this issue. In addition, Ecology is currently engaged in rulemaking concerning offset projects, and will continue to seek input on any outstanding concerns related to this issue during that rulemaking.

- Response to concern that the program would be weakened by the proposals in the legislation: Program coverage and stringency would be slightly increased by the proposals in the legislation. See Appendix A for more analysis.

During the Tribal forums, there were also several comments and questions related to the process of developing a linkage agreement and the benefits to linking. These concerns will be addressed during future Environmental Justice Assessments specific to linkage (see Background Information). Attendees expressed concerns regarding whether the program would be weakened by several of Ecology’s proposals. We do not expect any of the proposals to weaken the program. Finally, attendees raised the question about how Tribal lands are defined and if the definition was being changed in this request legislation. Ecology is not proposing to change the definition of Tribal lands.

2. Describe potential impacts related to Tribal rights and interests that are not in Tribal lands?

During the Tribal Forum on November 2, 2023, an attendee expressed concern that accepting offset credits from other jurisdictions could mean a loss of projects providing direct environmental benefits (DEBs)²² to Washington, including projects that provide benefits for salmon recovery.

Offset projects that are not located on Tribal lands still have the potential to provide benefits to Tribal rights and interests. For example, offset projects involving conservation and improved management of forests are expected to result in improved water quality, which could aid in salmon recovery. Additionally, in California, some Tribes have been able to purchase additional land using revenues generated from offset projects.

3. Summarize recommendations from Tribes to:

a. Mitigate or eliminate potential harms from the action

One Tribal representative recommended that Ecology include language in the request legislation to require offset projects developed on Tribal land to be approved by the Tribal government. They were concerned that a project developer could design a project on Tribal land without permission from the Tribal government.

²² Direct environmental benefits (DEBs) means environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state.

The CCA does not specifically address this issue. However, the CCA Implementation rule (WAC 173-446-520(3)(e))²³ requires prospective operators of offset projects on Tribal land to demonstrate that the Tribe on whose land the project is located has entered into an agreement with Ecology ensuring the enforceability of projects on the Tribe's land. In the absence of such an agreement, Ecology cannot approve the offset project listing. This provision expressly applies regardless of whether the proposed offset project is located on "tribal land" as defined in the CCA or "land that is owned by a tribe, or land that is subject to an ownership or possessory interest of a tribe." The required agreement must be in writing between Ecology and the tribal government and must specifically address all program requirements that are "applicable to the tribe in its role as the owner of land on which an offset project is located."

Ecology is currently engaged in rulemaking on the portions of the CCA rule relating to offset projects and will continue to seek input on any outstanding concerns related to this issue, including through the Environmental Justice Assessment that will be completed for that rulemaking.

Another Tribe expressed concern that the current forestry offset protocol does not provide enough flexibility on when timber can be harvested, which impacts tribal revenue. The Tribe requested Ecology modify the existing protocol or add another protocol to address this. This comment does not relate directly to the agency request legislation. However, Ecology staff are working directly with the Tribe regarding this recommendation and sees an opportunity to incorporate this idea into the [Cap-and-Invest Offsets Rulemaking](#)²⁴ currently underway.

b. Equitably distribute benefits from the action

Ecology has not received specific recommendations from Tribes on ways to equitably distribute benefits through the agency request legislation.

Ecology is proposing to add flexibility to allow a greater portion of Washington offset credits to come from projects on Tribal land. Currently, covered entities are allowed to use offset credits for up to 8% of their compliance obligation in the first compliance period. Only 3% of an entity's compliance obligation may be met with offset credits from projects on Tribal lands. Ecology's proposal would allow the entire 8% of offset credits to come from projects on Tribal lands. See proposal 2 in Appendix A for how offsets credit restrictions change in the second compliance period.

This change would lead to a more equitable distribution of environmental and economic benefits that result from the generation and sale of offset credits and would specifically benefit

²³ "For offset projects located on Tribal land, land that is owned by a Tribe, or land that is subject to an ownership or possessory interest of a Tribe, the offset project operator must demonstrate that the Tribe has entered into a written agreement, negotiated on an individual basis between ecology and the Tribal government, that establishes a dispute resolution process and/or other compliance mechanisms in order to ensure the enforceability of all program requirements applicable to the tribe in its role as the owner of land on which an offset project is located." WAC 173-446-520(3)(e)

²⁴ <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-446-offsets>

Tribes who participate in the program as offset project operators or otherwise host offset projects on their tribal lands.

We note that all federally recognized Tribes in Washington are eligible to participate in Ecology's [Tribal Carbon Offset Assistance Grants program](#).²⁵ The purpose of the grants program is to equitably support Tribes developing carbon offset projects and to reduce barriers to participating by providing financial and technical support. In developing the grant program, Ecology reached out to Tribes for input and integrated their input into the grant program guidance.

In addition, the CCA statute requires 10% of auction revenues to be used for projects with Tribal support (RCW 70A.65.230(1)(b)). The legislature is responsible for appropriating the CCA revenues, not Ecology.

4. Describe how consultation, engagement, and analyses of impacts to Tribes has informed the development of the action. If it has not, explain why.

Ecology developed the proposal to add flexibility for the use of offset credits from projects on Tribal lands. Our analysis suggests this change could benefit Tribes (Appendix A, Proposal 1).

Based on comments and concerns shared by Tribes, Ecology removed the initial proposal to add the ability to accept offset credits from linked jurisdictions if those offset credits provide direct environmental benefits to the linked jurisdiction (43), which would have expanded the range of eligible offset credits from other jurisdictions. Current law only allows Washington to accept offset credits from projects that provide direct environmental benefits to Washington or that are located within linked jurisdictions. This proposal was initially included to help facilitate linkage by increasing the fungibility of offset credits in a linked market. However, the concerns we heard about the proposal outweighed the benefits.

In early December, Ecology shared an updated summary of proposals considered for the request legislation that included added and modified proposals (Proposals 3, 4, 7 in Appendix A). For the new proposals, Tribes did not have as much time to review and provide input as compared to the proposals that were developed before the comment period began. As the proposals under consideration changed, Ecology notified Tribes by email.

Linkage related impacts

The proposals in Ecology's request legislation are intended to remove barriers to linkage, and linking carbon markets may have impacts on Tribes. However, the proposed statutory changes do not in themselves constitute linkage, nor do they make linkage inevitable if enacted. This Environmental Justice Assessment is examining the impacts of Ecology's agency request legislation, not the overall impacts of linkage.

In this Environmental Justice Assessment, we are sharing but not directly addressing the comments we received that are related to linkage more generally. We will consider the general

²⁵ <https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Tribal-Carbon-Offset-Assistance-Program>

input related to linkage as we move forward with the linkage process, including through additional Environmental Justice Assessments that will be completed to inform Ecology's rulemaking and negotiation of a linkage agreement. Ecology will continue to use the linkage specific input and recommendations from Tribes throughout the process to develop a linkage agreement and the associated Environmental Justice Assessments.

5. Describe any plans to continue consultation or engagement with Tribes related to this action.

Ecology will continue to offer consultation and meet with Tribes to gather input on the proposed legislation, on linkage in general, and on overall implementation of the cap-and-invest program after the bill is introduced. The timeline for consultation and engagement related to linkage is outlined on our [cap-and-invest linkage webpage](#).²⁶

Section 6: Identification of Overburdened Communities & Vulnerable Populations

This section identifies overburdened communities and vulnerable populations, as identified in the [definitions of RCW 70A.02](#), who will be affected by the action.

1. Identify Overburdened Communities and Vulnerable Populations

Cap-and-invest is a statewide program and as a result the agency request legislation may have impacts across the state. The request legislation proposals are largely about harmonizing Washington's carbon market with the California-Québec market and removing barriers to linkage with California and Québec. The request legislation does not directly result in a linked carbon market. Given this scope of the agency request legislation, Ecology does not anticipate these proposals will increase greenhouse gas emissions, air pollution, or environmental harms in Washington, and the proposals are not likely to negatively impact overburdened communities and vulnerable populations. Potential impacts from linkage, especially environmental harms, will continue to be evaluated in separate Environmental Justice Assessments that are required before Ecology can sign a linkage agreement.

The agency request legislation currently contains 11 of the 12 proposals described in this Environmental Justice Assessment:²⁷

- Proposal 2: Offsets credits – add flexibility for projects on Tribal lands: RCW 70A.65.170(3)
- Proposal 3: Offset credits – remove the date restrictions on offset credits from offset projects provided by a linked jurisdiction (RCW 70A.65.170(5)(b))
- Proposal 4: Allow Ecology to change the length of compliance periods, if needed to synchronize with linked jurisdictions (RCW 70A.65.010(20))

²⁶ <https://ecology.wa.gov/Air-Climate/Climate-Commitment-Act/Cap-and-invest/Linkage>

²⁷ Ecology removed Proposal 1: Offset credits – direct environmental benefits from a linked jurisdiction: RCW 70A.65.170(2)) based on feedback from Tribes and other interested parties.

- Proposal 5: Increase allowance purchase limit for covered entities to 25% (RCW 70A.65.100(6)(a))
 - Proposal 6: Remove vintage year allowance holding limit for general market participants (RCW 70A.65.100(6)(b))
 - Proposal 7: Remove Ecology’s discretion to reduce penalties (RCW 70A.65.200(7))
 - Proposal 8: Add authority for Ecology to modify certain provisions in rule, if necessary to link
 - Proposal 9: Modify requirements related to electricity reporting and imports (RCW 70A.15.2200(5)(a), RCW 70A.65.010(27) and (42), RCW 70A.65.080(1)(c))
 - Proposal 10: Modify reserve auction application timelines (RCW 70A.65.150(5))
 - Proposal 11: Authorize Ecology to deviate from the EPA greenhouse gas reporting platform (RCW 70A.15.2200)
 - Proposal 12: Modify due date of the CCA Spending Report (RCW 70A.65.300)
2. When applicable, using the [Washington State Department of Health’s Environmental Health Disparities Map \(EHD Map\)](#),²⁸ identify the EHD Map rankings for all census tracts likely to be impacted by the action.

Not applicable

3. From the rankings identified in question 2, are there any census tracts ranked 9 and 10?

Not applicable

4. Please describe additional cumulative health considerations relevant to this action.

At this time, Ecology has not identified additional cumulative health considerations anticipated to result from the passage of the agency request legislation.

We included a preliminary analysis of the impacts on air pollution related to linking carbon markets in the [Cap-and-Invest Linkage Criteria: Preliminary Analysis](#)²⁹ report published in October 2023.

Ecology will continue to assess this in future Environmental Justice Assessments that will be required prior to implementing cap-and-invest linkage.

5. When applicable, using the [EPA’s Environmental Justice Screening and Mapping Tool](#) (EJScreen), identify areas likely to be impacted by the action that are at or above the 80th percentile³⁰ (in state) for the “People of color” and “Low income” socioeconomic indicators.

Not applicable. Ecology has determined communities of color and low-income populations are not likely to be impacted by the request legislation.

²⁸ <https://fortress.wa.gov/doh/wtnibl/WTNIBL>

²⁹ <https://apps.ecology.wa.gov/publications/summarypages/2314005.html>

³⁰ The EPA identified the 80th percentile as an initial starting point and potential indicator of environmental justice considerations. www.epa.gov/ejscreen/frequent-questions-about-ejscreen

- Identify other EJScreen “Socioeconomic” and “Health Disparities” indicators at or above 80th percentile (in state) that are most relevant to this action.

Of the health disparities data in EJScreen, we examined the data for the asthma indicator. Compared to other health disparities indicators, asthma could be the most relevant to the agency request legislation since industries participating in the cap-and-invest program may also be a source of criteria air pollutants. We include a statewide map at the census tract level with health data for asthma below.

At this time, we do not anticipate that the proposals in the agency request legislation would increase greenhouse gas emissions or air pollution, including criteria air pollutants such as PM2.5 that are seen in areas with a higher prevalence of asthma (see analysis in Appendix A).

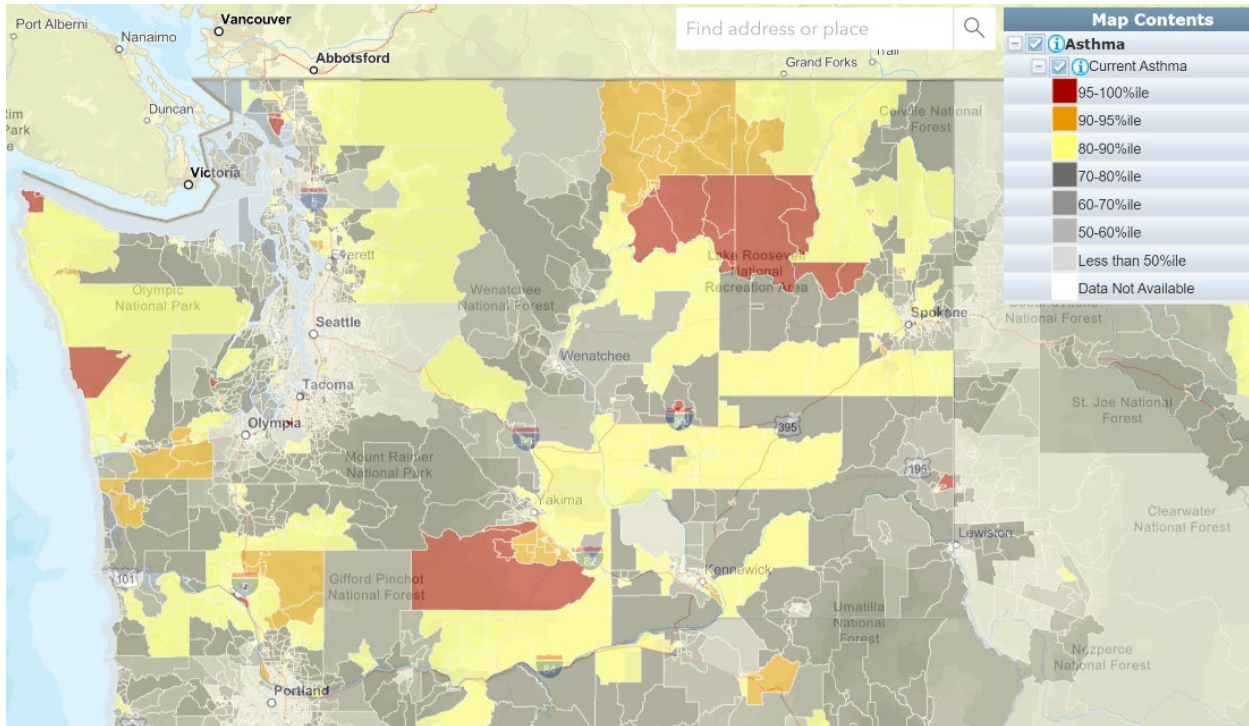


Figure 1: Map of the health disparity, asthma. The yellow, orange, and red areas rank in the 80th percentile or above.

- Using EJScreen, identify additional anticipated impacts from climate change in the impacted area, if relevant.

Climate change is impacting areas across Washington. These impacts are expected to become more severe and/or occur with increased frequency over time. Some of the impacts expected to be the most common are increased flooding, drought, and wildfire. The maps below show the areas most likely impacted by increased flood risk and wildfire risk. While these maps do not specifically identify areas that are overburdened, overburdened areas and vulnerable communities across Washington are especially at risk from climate change impacts including flood, drought, and wildfire.

Flood risk is higher in Western Washington, with communities on the Salish Sea and Pacific Ocean coastlines being impacted by rising sea level. Eastern Washington has increased wildfire risks relative to Western Washington. We expect the cap-and-invest program to contribute to reducing these impacts of climate change in the future. Ecology will continue to assess impacts from climate change throughout the implementation of the cap-and-invest program and other carbon pollution reduction programs, including impacts on people in overburdened communities and vulnerable populations.

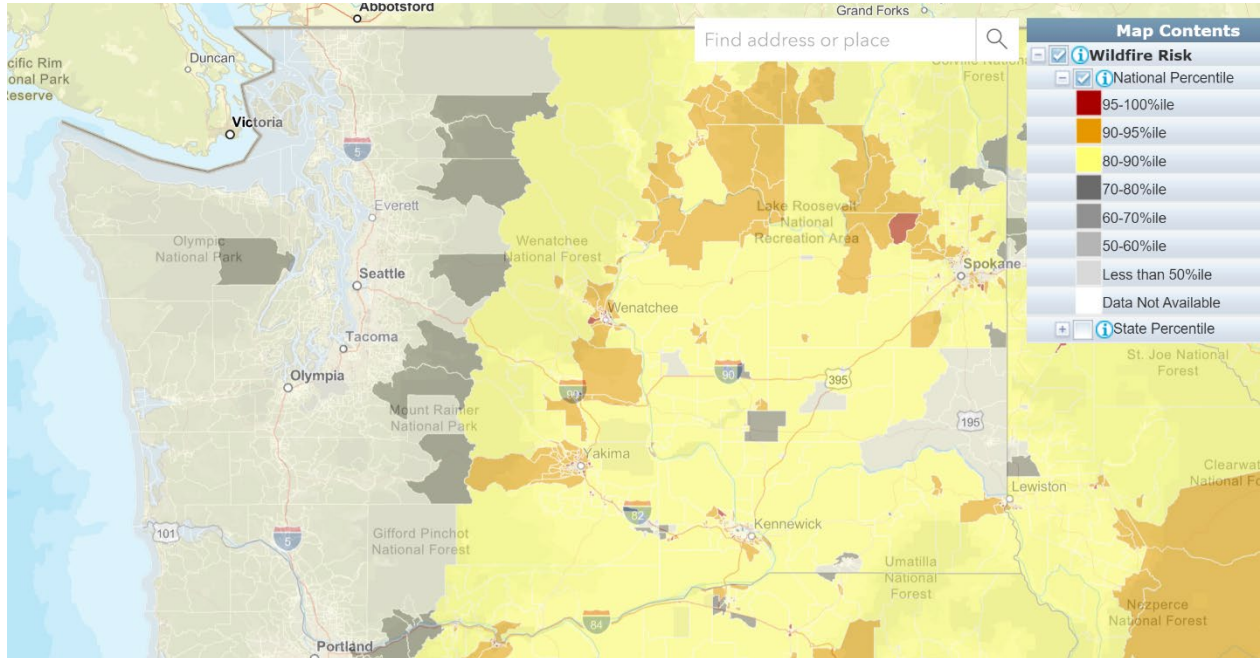


Figure 2: Map of wildfire risk due to climate change across Washington State. The yellow, orange, and red areas rank in the 80th percentile or above.

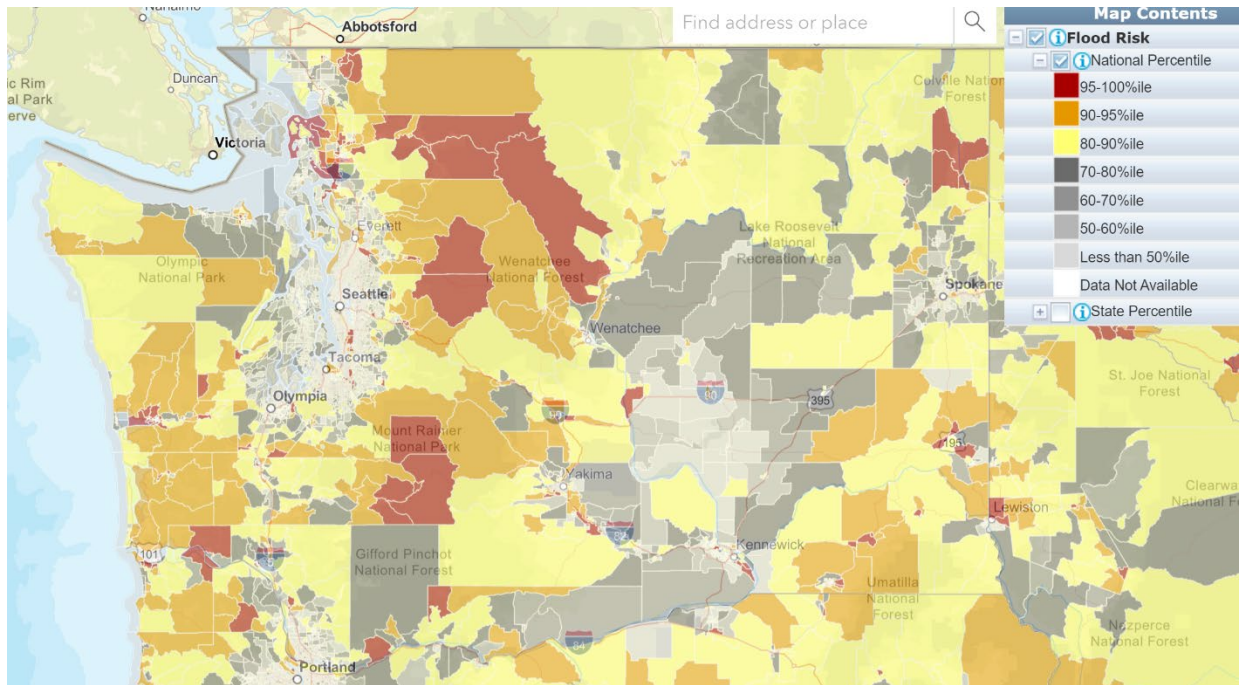


Figure 3: Map of the flood risk due to climate change across Washington State. The yellow, orange, and red areas rank in the 80th percentile or above.

8. Using the federal [Climate and Economic Justice Screening Tool \(CEJST\)](#)³¹, identify if the potentially affected area is considered disadvantaged for climate risks for additional indicators (as relevant).

Not relevant. The proposals in this agency request legislation are not likely to affect specific areas, however potentially highly impacted areas for wildfire risk and flood risk are provided in question 7.

9. Identify additional overburdened communities and vulnerable populations that are likely to be affected by the action.

The proposals in this request legislation focus on reducing barriers to carbon market linkage and increase operational efficiency of the cap-and-invest program. While these request legislation proposals are not likely to affect communities, the following additional communities and vulnerable populations are more likely to be generally affected by the state's cap-and-invest program:

- Communities located near industries regulated by the cap-and-invest program.
- Populations with respiratory problems and diseases.
- People experiencing additional impacts of climate change.
- Populations working in outdoor work environments.

³¹ This is a national tool and may provide relevant information and understanding of the climate related context of the action. Learn more about the methodology for identifying if a community is disadvantaged for climate risks: <https://screeningtool.geoplatform.gov/en/methodology>

10. Through community engagement, were additional overburdened communities and vulnerable populations identified who are likely to be affected by the action? Describe additional communities or populations identified, and the reasons they would be considered overburdened and vulnerable.

At this time, no additional communities or populations have been identified.

11. Through Tribal Consultation, were additional overburdened communities and vulnerable populations identified who are likely to be affected by the action? Describe additional communities or populations identified, and the reasons they would be considered overburdened and vulnerable.

Through Tribal engagement and consultation, we identified communities residing on or near Tribal lands as potentially affected by this action. Tribal governments shared concerns that any policy that reduces the value of carbon offset credits could impact a Tribe's ability to participate in the offset market and may reduce the revenue Tribes generate from offset projects.

Section 7: Summary of Community Engagement

This section summarizes community engagement activities. Community Engagement should be tailored to specifically reach people in overburdened communities and vulnerable populations. Community engagement is required for all significant agency actions, but the engagement methods will vary depending on the size, scope, and topic of the project. The level, type, and form of engagement is based on the likelihood that the actions may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.

Summarizing Community Engagement

1. Describe the engagement activities with identified overburdened communities and vulnerable populations.

Since cap-and-invest is a statewide program, we compiled a list of organizations that self-identify as serving overburdened communities and vulnerable populations within specific communities or across the state. We also emailed information about proposals we were considering for the proposed legislation to the CCA email bulletin listserv³² which reaches a broad set of interested parties, including cap-and-invest market participants, environmental groups, environmental justice groups, Tribal government staff, community-based organizations, and media.

We sent additional separate email messages to more than 30 environmental justice and community-based organizations around the state and followed up with phone calls to many of the organizations. We focused our outreach on groups we have previously reached out to

³² https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_15

during the exploratory phase of linkage, contacts for community-based organizations provided by Ecology’s Hazardous Waste and Toxics Reduction program, groups focused on environmental issues, groups focused specifically on environmental justice issues, as well as other groups representing vulnerable populations and overburdened communities– including Front and Centered, Got Green, 350 Seattle, El Centro de La Raza, Wenatchee Café, and Washington Build Back Black Alliance.

Ecology invited organizations to attend Environmental Justice Assessment forums on October 25 and October 26, 2023 to learn more about the proposed agency request legislation and share feedback. We provided an overview of the proposed legislation, answered questions, and had a guided discussion about participants’ concerns and feedback on the proposals. We also offered to schedule additional meetings with any interested parties.

The comment period initially ran from October 19 through November 8, 2023. Based on input from interested parties, Ecology extended the comment period to close on December 31, 2023. Interested parties could submit comments in writing through an electronic comment platform, or by email, or verbally during a meeting. To date, Ecology has received comments from 11 individuals and groups representing overburdened communities and environmental justice concerns.

In early December, Ecology shared an updated summary of proposals considered for the request legislation that included added and modified proposals (Proposals 3, 4, 7 described in Appendix A). Ecology made these changes based on additional information gathered that indicated certain provisions in the existing statute were barriers to linkage. As the proposals under consideration changed, Ecology notified interested parties by email. Because of the shifting nature of legislation, some groups submitted comments before Ecology shared updates about the proposals.

Ecology acknowledges it was challenging for people in overburdened communities and vulnerable populations to provide meaningful input on the agency request legislation. There was a short period of time between the Director’s preliminary announcement to pursue linkage and the deadline for submittal of our agency request legislation package. Prior to the Director’s preliminary announcement to pursue linkage, Ecology could only share limited details about the proposals being considered or developed due to the market sensitivity of that information. This gave Ecology a limited timeframe to engage with communities, resulting in a short time for members of overburdened communities to engage with the material and respond.

Engagement on cap-and-invest linkage

Ecology conducted the exploratory phase of outreach concerning linkage during the first half of 2023 and asked for public comments from February 2023 through mid-May 2023. During this period, Ecology conducted a preliminary assessment of whether linkage is likely to meet the statutory requirements set forth in RCW 70A.65.210.³³ Ecology staff contacted organizations that prioritized environmental justice, air quality, and climate action, requesting feedback on

³³ Ecology completed a [preliminary analysis of the linkage criteria report](https://apps.ecology.wa.gov/publications/summarypages/2314005.html) in October 2023. <https://apps.ecology.wa.gov/publications/summarypages/2314005.html>

concerns about linking and potential impacts on overburdened communities and vulnerable populations. We incorporated this feedback into the preliminary assessment on linkage.

During the outreach done specifically for the request legislation, we received feedback related to concerns about linkage in general. While this feedback is valuable for Ecology as we continue to evaluate and pursue linkage, the purpose of the request legislation is to remove or minimize existing barriers to linkage. The proposed statutory changes do not in themselves constitute linkage, nor do they make linkage inevitable if enacted. We shared the more general comments we received related to linkage in this Environmental Justice Assessment but do not directly analyze or address them here. We will continue to consider the input and create more opportunities for engagement as we develop a linkage agreement and complete associated Environmental Justice Assessments required for the agreement.

Engagement with the Washington Environmental Justice Council

Ecology has been engaging with the Environmental Justice Council (Council) and its staff on cap-and-invest implementation since the Council's inception. In January 2023, Ecology staff initiated engagement with the Council specifically on linkage. On October 26, 2023, the Environmental Justice Council shared comments and recommendations related to linkage through a letter to Ecology's Director (available on the [Environmental Justice Council's webpage](#)).³⁴ In the letter, the Council recommended that Ecology not link at this time. Ecology is in the process of evaluating the precautionary principle-based recommendations the Council shared in their letter and will continue to engage with the Council and seek to be responsive to their requests and concerns. Ecology has integrated feedback and concerns heard from the Council over the previous year into our thinking and analysis about linkage, its potential impacts, and the process developed to engage overburdened communities and vulnerable populations. This learning informed the development of the process to conduct outreach on the Environmental Justice Assessment for the request legislation.

Specifically, Ecology shared information with the Council related to the cap-and-invest request legislation and attended the Council's CCA Committee meetings on November 15 and December 14, 2023 to discuss the proposals. Ecology staff has additionally answered several rounds of questions from Council Members directed to Ecology by Council staff. At the December 14 Council meeting, the Council passed a motion to oppose aspects of legislation necessary to facilitate linkage, but support changes to the CCA to offer benefits to federally recognized Tribes and overburdened communities.

2. What actions were taken to help address barriers to meaningful engagement?

To accommodate schedules, we offered both daytime and evening online forums. We also extended an invitation to meet with people at a convenient time for them. To comply with Title VI of the Civil Rights Act, all materials and meetings met state accessibility standards and Ecology provided information on how to request language access. We were not able to provide

³⁴ <https://waportal.org/sites/default/files/team-exchanges/2023-12/Environmental%20Justice%20Council%20Letter%20to%20Ecology%20RE%20-%20Linkage.pdf>

additional support such as stipends or reimbursements for participating in the engagement due to time limitations.

Ecology extended the comment period to December 31, 2023 in order to provide more time for engagement on the agency request legislation.

3. Identify overburdened communities or vulnerable populations potentially affected by the action who were not engaged and explain why not.

Ecology identified potential statewide impacts from the agency request legislation; however, Ecology did not identify overburdened communities for vulnerable populations who will be disproportionately affected by the request legislation.

Ecology acknowledges it was challenging for people in overburdened communities and vulnerable populations to provide meaningful input on the agency request legislation. There was a short period of time between the Director's preliminary announcement to pursue linkage and the deadline for submittal of our agency request legislation package. Prior to the Director's preliminary announcement to pursue linkage, Ecology could only share limited details about the proposals being considered or developed due to the market sensitivity of that information. We focused on connecting with organizations who serve overburdened communities and who have engaged with cap-and-invest related comment periods in the past. If time had allowed, it would have been valuable to host in-person meetings in partnership with organizations to directly communicate with community members.

We also received feedback that it would be helpful to provide information at the start of the Environmental Justice Assessment process about the anticipated impacts to vulnerable populations and overburdened communities, as opposed to sharing that analysis as part of the completed Assessment.

4. Summarize recommendations from members of overburdened communities and vulnerable populations to mitigate or eliminate potential harms from the action and/or equitably distribute benefits from the action.

Most of the comments submitted to Ecology were from businesses and environmental organizations, and not from members of overburdened communities and vulnerable populations. Comments from businesses and environmental organizations are only included in this Environmental Justice Assessment if they directly address impacts to overburdened communities.

As mentioned above in section 6, question 1, Ecology made changes to our request legislation proposals once the comment period was underway (adding proposals 3, 4, 7 described in Appendix A). For these proposals, members of overburdened communities and vulnerable populations did not have as much time to review and provide input as compared to the proposals that were developed before the comment period began.

We summarized the recommendations and concerns received from October 19 to December 31, 2023 below.

Comments from community members

Three individuals commented and their comments are summarized below. The comments are about the cap-and-invest program overall or linkage in general and did not express specific concerns or recommendations related to the agency request legislation.

Recommendations

- Better enforcement and oversight for access to funding in communities where the cap-and-trade offset credits are generated.
- Adopt California's greenhouse gas emissions reporting threshold and do not change Washington's threshold because the information gathered could provide data on local air quality impacts.

Concerns

- Linking could reduce the amount of investment in Washington-based projects, including for Tribal projects.
- Concerns about the use of offset credits and impacts on communities.

Comments from environmental justice organizations and organizations serving overburdened communities

- We met with or received comments from five environmental justice or community-based organizations and summarized their input below. These comments focused on the agency request legislation in particular, the Environmental Justice Assessment process, and linkage in general.

Recommendation

- Proceed with the agency request legislation and align policies needed to link carbon markets. This will ensure the cap-and-trade program continues to improve life expectancy and improve air quality in overburdened communities.
- If Washington links, there needs to be a plan to reduce harm on communities.
- If Washington links, California should adopt Washington's high standards for protecting overburdened communities and funding air quality programs.
- Conduct a more thorough assessment of the effects of linkage on overburdened communities.
- Increase engagement with people in overburdened communities, including by offering different modes of engagement in community spaces.

Concerns

- Linking may cause allowance prices to go down and revenue from auctions that goes to projects for overburdened communities would then decrease as well, reducing overall financial benefits available.
- There is no guarantee that overburdened communities and vulnerable populations (specifically communities of color) will not be harmed by linking carbon markets.
- Linking carbon markets addresses short-term economic benefits instead of long-term impacts on the environment and people.

- Ecology prioritized input from the general public rather than provide members of overburdened communities with the tools to analyze potential impacts from the agency request legislation.

Environmental justice related comments from environmental organizations

We received environmental justice related comments from three environmental organizations and summarized the comments below. Since these organizations are not specifically representing overburdened communities, we have separated the comments into their own section and only included their comments related to environmental justice issues.

Recommendation

- Increase time and provide more details in the proposals to have meaningful engagement with vulnerable populations in overburdened communities.
- Include policies to actively improve air quality in overburdened communities and adopt regulation to improve air quality in communities with high cumulative pollution burdens, including placing pollution limits on certain high-polluting facilities in overburdened communities.
- Support for the proposal to allow additional flexibility of offsets credits originating from Tribal lands.

Concerns

- The agency request legislation related to linkage should only be pursued after California and Québec finish a review of their programs and Ecology completes a linkage specific Environmental Justice Assessment.

5. Describe any plans for ongoing engagement with overburdened communities and vulnerable populations related to this action.

After the Environmental Justice Assessment is completed, Ecology will share the completed assessment with people and groups who submitted comments. Ecology is aware that the impacts of linking carbon markets with California and Québec is a concern for many organizations and communities. Ecology will conduct specific outreach related to linkage in 2024 and beyond, including as part of the Environmental Justice Assessment that will be required for rulemaking related to linkage, a public hearing on a draft linkage agreement, and an Environmental Justice Assessment required before signing a linkage agreement.

Section 8: Potential Environmental Benefits & Harms from Action

Identify Potential Environmental Benefits & Harms from Action

1. Describe the anticipated benefits (direct and/or indirect) from this action.

For the agency request legislation, Ecology considered 12 different proposals for cap-and-invest program improvements and to address barriers to linkage with California and Québec.

Outlined below is each proposed statutory change Ecology considered including in the request legislation and its anticipated benefit(s). This subsection describes all anticipated benefits of the proposed statutory amendments, while question 3 specifically addresses the anticipated benefits for members of overburdened communities.

The proposals that have an anticipated benefit of removing barriers to linkage are proposals 1, 3, 4, 5, 6, 7, 8, and 9.

See Appendix A for additional explanation on each proposal, and information on the assumptions and background information used in Ecology's analysis of the benefits of each proposal. Based on feedback we received from the Environmental Justice Council, we are attempting to be as explicit and transparent as possible about our assumptions in this analysis.

Proposal 1: Offsets credits – authorize Ecology to accept offset credits from linked jurisdictions that provide direct environmental benefits (DEBs)³⁵ to those jurisdictions (RCW 70A.65.170(2))

[After receiving feedback, Ecology decided to remove this proposal in the request legislation that we submitted to the Governor's office.]

Anticipated benefits: This policy could increase the availability and reduce the cost of offset credits that could be used for compliance in Washington.

Proposal 2: Offsets credits – add the ability for Ecology to accept more offset credits from offset projects on Tribal lands (RCW 70A.65.170(3))

Anticipated benefits: This policy could provide economic benefits and environmental benefits to federally recognized Tribes and communities residing on or near Tribal lands as a result of increased demand for Tribal carbon offset projects.

Proposal 3: Offsets credits – remove the date restrictions on offset credits from offset projects provided by a linked jurisdiction (RCW 70A.65.170(5)(b))

Anticipated benefits: This proposal could marginally increase the availability and reduce the cost of offset credits that could be used for compliance in Washington.

³⁵ Direct environmental benefits (DEBs) means environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state.

Proposal 4: Allow Ecology to change the length of compliance periods, if needed, to synchronize with linked jurisdictions (RCW 70A.65.010(20))

Anticipated benefits: If Ecology pursues rulemaking to change the length of compliance periods, more specific impacts will be evaluated through the Environmental Justice Assessment completed as part of the rulemaking process.

Proposal 5: Increase allowance purchase limits for covered entities to 25% (RCW 70A.65.100(6)(a))

Anticipated benefits: This policy could eliminate a possible risk for larger covered entities by allowing them to purchase additional allowances at auctions, instead of making those purchases on the secondary market which often has a price premium. This would then decrease the cost of compliance for these covered entities, potentially reducing costs passed on to consumers.

Proposal 6: Remove vintage year³⁶ allowance holding limit for general market participants (RCW 70A.65.100(6)(b))

Anticipated benefits: No other anticipated benefits have been identified, beyond removing a barrier to linkage.

Proposal 7: Remove Ecology’s discretion to reduce penalties (RCW 70A.65.200(7))

Anticipated benefits: No other anticipated benefits have been identified, beyond removing a barrier to linkage.

Proposal 8: Add authority for Ecology to modify certain provisions in rule, if necessary to link

Anticipated benefits: If Ecology pursues the authorized rulemaking, impacts would be evaluated through the Environmental Justice Assessment completed as part of the rulemaking process.

Proposal 9: Modify requirements related to electricity reporting and imports (RCW 70A.15.2200(5)(a), RCW 70A.65.010(27) and (42), RCW 70A.65.080(1)(c))

Anticipated benefits: The proposals may result in a small increase in the scope of greenhouse gas emissions covered by the cap-and-invest program as a result of tightening the requirements on electricity reporting. This proposal may result in increased revenues generated by the allowance auctions, a portion of which are required by law to be distributed to overburdened communities and Tribes.

Proposal 10: Modify reserve auction application timelines (RCW 70A.65.150(5))

Anticipated benefits: This proposal would remove scheduling difficulties that occur when Allowance Price Containment Reserve (APCR) auctions are triggered.

Proposal 11: Authorize Ecology to deviate from EPA GHG reporting platform (RCW 70A.15.2200)

³⁶ “Vintage year” means the annual allowance allocation budget year to which an individual Washington greenhouse gas allowance is assigned.

Anticipated benefits: This policy could result in more consistent greenhouse gas emissions data over time, making it easier for Ecology and communities to measure actual changes in greenhouse gas emissions from entities in Washington.

Proposal 12: Modify due date of the CCA Spending Report (RCW 70A.65.300)

Anticipated benefits: Shifting the due date of the report will allow the most up-to-date information to be included in the report by providing time for agencies to close out all expenditures from the fiscal year and report those to Ecology. This will result in legislators and the Governor's office having better data to base decisions on; and the public, including members of overburdened communities, having better data to track CCA expenditures.

2. Who will primarily benefit from this action?

Each proposal included in the request legislation will benefit different interested parties, and some proposals will benefit people in overburdened communities (described below in question 3). On the whole, the agency request legislation will improve the functioning of the cap-and-invest program and reduce barriers to linkage which is intended to benefit all residents of Washington through critical reductions in greenhouse gas emissions that result from an effective and durable cap-and-invest program.

3. How is the action expected to benefit specifically overburdened communities or vulnerable populations? If there is no benefit, identify potential barriers to benefitting from the action.

Through our analysis and input from interested parties, Ecology identified the following proposals as having anticipated benefits to overburdened communities or vulnerable populations:

- Proposal 2: adding flexibility to offset projects on Tribal lands increases the access and opportunity Tribes have to participate in the program as offset project operators or by hosting offset projects on their Tribal lands. The proposal is intended to more equitably distribute the environmental and economic benefits that result from the generation and sale of offset credits.
- Proposal 9: modifying some requirements related to electricity reporting and imports will increase the scope of the greenhouse gas emissions covered by the cap-and-invest program. This could result in additional emissions being accounted for in the program and subject to the declining cap, which would result in greater emissions reductions over time. This proposal may result in benefits to overburdened communities because it could result in increased revenues generated by the allowance auctions, a portion of which are required by law to be distributed to overburdened communities and Tribes.
- Proposal 11: deviating from the EPA GHG reporting platform to a Washington specific GHG reporting platform would make it easier to measure actual changes in greenhouse gas emissions from facilities.
- Proposal 12: modifying the due date of the CCA spending report will provide members of overburdened communities with better information on the annual CCA expenditures, including the portion of funding that went towards projects benefiting overburdened communities or vulnerable populations.

The remaining proposals benefit all people in Washington by ensuring the current market will run more smoothly or removing barriers to linkage with California and Québec. See Appendix A for information on the assumptions and background information used in Ecology's analysis of the benefits of each proposal.

We will complete an Environmental Justice Assessment specifically analyzing the impacts of linkage with the California-Québec market prior to signing a linkage agreement.

4. Describe anticipated harms (direct and/or indirect) from this action.

Ecology has heard concerns about potential harms related to some of the proposals we considered including in the agency request legislation. However, other than those harms from proposals 1 and 3 discussed below, the agency has not identified specific impacts from the request legislation that will cause direct or indirect harms to vulnerable populations in overburdened communities. Ecology removed proposal 1 from the agency request legislation and modified proposal 6 in response to this feedback.

This section summarizes the concerns about potential harms that were shared about the following proposals.

See appendix A for more detailed information on the assumptions and background information used in Ecology's analysis of the impacts of each proposal.

Proposal 1: Offsets credits – authorize Ecology to accept offset credits from linked jurisdictions that provide direct environmental benefits to those jurisdictions (RCW 70A.65.170(2))

[After receiving feedback, Ecology decided to remove this proposal in the request legislation that we submitted to the Governor's office.]

Potential harms: The existing statute allows Ecology to accept offset credits only if they come from projects that provide direct environmental benefits to Washington or are located in a linked jurisdiction. This proposal would have expanded the scope of acceptable offset credits from a linked market to include those from projects located outside of any linked jurisdiction as long as they provide direct environmental benefits to one of the linked jurisdictions. Ecology initially included this proposal due to the anticipated benefits of increasing the fungibility of offset credits, which would reduce a barrier to linkage. However, we received feedback that this change would exacerbate existing concerns about linkage in general.

For example, we heard concerns that this change would reduce offset credits prices which could reduce incentives for developing offset projects in Washington, including on Tribal lands, or ensuring they provide direct environmental benefits to Washington. We also heard concerns that this change could negatively impact a federally recognized Tribe's ability to generate additional revenue by participating as an offset project operator or otherwise hosting an offset project on their tribal lands. Ecology did additional evaluation and determined that we could implement linkage without this proposal, so we removed it from the agency request legislation in response to this feedback.

Proposal 3: Offset credits – remove the date restrictions on offset credits from offset projects provided by a linked jurisdiction (RCW 70A.65.170(5)(b))

Potential harms: This proposal removes the date restrictions on offset credits issued by a linked jurisdiction. This policy change could marginally increase the availability and reduce the cost of offset credits that could be used for compliance in Washington. Some Tribes expressed general concerns that a reduction in the value of offsets may impact their ability to participate in the offset market and earn additional revenue.

Ecology expects the impact from this proposal on offset credit prices to be minimal because many of the pre-2019 offset credits from California and Québec have already been used for compliance. Therefore, this proposal would impact a relatively small number of offset credits. However, the policy has been identified as a barrier for linkage because it restricts the fungibility of compliance instruments across linked jurisdictions.

Proposal 5: Increase allowance purchase limits for covered entities to 25% (RCW 70A.65.100(6)(a))

Potential harms: We heard concerns that this policy could allow covered entities to have more influence over the allowance market. Ecology has assessed that proposal 5 will not have this impact. This is because other aspects of the program will limit the impact of the higher purchase limit – including the overall holding limits and ongoing market monitoring by Ecology staff and third parties. See Appendix A, proposal 5 for a detailed explanation of how this will work.

Proposal 6: Remove vintage year allowance holding limit for general market participants (RCW 70A.65.100(6)(b))

Potential harms: We heard concerns that this policy could allow general market participants³⁷ to have more influence over the allowance market. To address these concerns Ecology modified this proposal so it would only go into effect if Washington links with jurisdictions that do not have a vintage year holding limit for general market participants.

Based on Ecology's assessment, the vintage year holding limit does not currently have an effect on the market. This is because the generally applicable holding limits that are in place now (and will remain in place if this proposal is adopted), are considerably more stringent than the vintage year specific holding limit Ecology is proposing to remove. for a more detailed explanation of how this works.

Proposal 8: Add authority for Ecology to modify certain provisions in rule, if necessary to link

Potential harms: We heard general concerns about modifying specific provisions of the cap-and-invest program, including environmental justice provisions, mechanisms that might ultimately influence auction revenues, and offset provisions. Ecology has assessed that proposal 8 will not have these impacts. First, the authority to modify provisions by rule is limited to specific sections of the statute and does not include the sections outlining the environmental

³⁷ "General market participant" means a registered entity that is not identified as a covered entity or an opt-in entity that is registered in the program registry and intends to purchase, hold, sell, or voluntarily retire compliance instruments.

justice provisions. Second, the new statutory authority would not directly or immediately result in any impacts, as any changes would need to be made through rulemaking.

For a more detailed explanation, see Appendix A, proposal 8.

5. Who will primarily experience the harms?

Ecology has not identified anticipated harms from the request legislation. Overall, we expect the request legislation to moderately improve the ability of the cap-and-invest program to reduce greenhouse gas emissions and provide revenue for projects over time by reducing barriers to linkage.

See Appendix A for information on the assumptions and background information used in Ecology's analysis of the impacts of the policy.

6. Describe how the action may harm overburdened communities or vulnerable populations? Be as specific as possible.

Ecology expects the request legislation will have minimal harm on overburdened communities or vulnerable populations. Proposal 1, regarding offsets with direct environmental benefits from linked jurisdictions, was removed completely based on comments received and a determination that it was not a critical barrier to linkage.

People in overburdened communities shared through comments potential harms related to the impact of linkage in general on overburdened communities, including impacts to funding for projects and impacts to air pollution. Since this Environmental Justice Assessment is focused on the impacts of the agency request legislation and the proposed statutory changes would not by themselves result in a linked carbon market, these potential harms were not directly addressed. There will be another Environmental Justice Assessment specific to the terms of a proposed linkage agreement that will explore those concerns further.

See Appendix A for information on the assumptions and background information used in Ecology's analysis of the impacts of each proposal.

7. Describe how the action would address environmental and health disparities.

The request legislation does not directly address environmental and health disparities. The agency request legislation is intended to improve the functioning of the cap-and-invest market and reduce barriers to linkage. However, the provisions in the agency request legislation will not result in a linked carbon market. There will be another Environmental Justice Assessment to evaluate how a proposed linkage agreement would address environmental and health disparities.

Section 9: Options to Eliminate, Reduce, or Mitigate Harms and Equitably Distribute Benefits

This section summarizes options identified for eliminating, reducing, or mitigating harms, as well as options for equitably distributing anticipated benefits. The answers in this section should be informed by engagement, answers from the previous subsections, and any legislative or regulatory boundaries that limit possible decision making.

Identify Options to Eliminate, Reduce, or Mitigate Harms & Equitably Distribute Benefits

1. Describe options to reduce, mitigate, or eliminate the identified probable harms to overburdened communities and vulnerable populations; and options to equitably distribute the benefits.

Because the final content of the bill is subject to the legislative process and thus beyond Ecology's control, our ability to reduce, mitigate, or eliminate harms or more equitably distribute benefits through this action is limited to proposing statutory amendments that could accomplish those goals while excluding proposals that would undermine them.

Based on comments and concerns shared by Tribes, Ecology removed the initial proposal to add the ability to accept offset credits from linked jurisdictions if those offset credits provide direct environmental benefits to the linked jurisdiction (see Appendix A, proposal 1) which would have expanded the range of eligible offset credits from other jurisdictions. Current law only allows Washington to accept offset credits from projects that provide direct environmental benefits to Washington or are located within linked jurisdictions. This proposal was initially included to help facilitate linkage; however, we determined the concerns about the proposal outweighed the benefits.

2. Describe methods chosen for this action to reduce, mitigate, or eliminate the identified probable harms to overburdened communities and vulnerable populations; and methods chosen to equitably distribute the benefits. You must consider the following methods, but are not limited to them:
 - Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;
 - Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;
 - Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;
 - Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action;
 - Prioritizing equitable distribution of resources and benefits to overburdened communities;
 - Promoting positive workforce and job outcomes for overburdened communities;
 - Meeting community needs identified by the affected overburdened community;

- Modifying substantive regulatory or policy requirements; and
- Any other mitigation techniques, including those suggested by the council, the office of equity, or representatives of overburdened communities and vulnerable populations.

As discussed above, Ecology determined that most of the concerns raised by members of overburdened communities and vulnerable populations were related to anticipated harms from linkage in general, which would not result from the specific provisions of the agency request legislation. Ecology will consider and address environmental harm concerns related to developing a linkage agreement in future steps in the linkage process. These steps include, but are not limited to, cap-and-invest rulemaking and an associated Environmental Justice Assessment, the linkage agreement negotiations and associated Environmental Justice Assessment on the agreement, and ongoing implementation of the cap-and-invest program.

Tribes identified the proposal to expand Ecology’s authority to accept offset credits to include those that provide direct environmental benefits to a linked jurisdiction (Appendix A, proposal 1) as having the potential to harm Tribes. Based on comments received from Tribes, environmental justice organizations, and community members, we removed this proposal from the request legislation.

Due to the constraints related to the scope and timeline for developing the agency request legislation, we did not develop new policy proposals that would address methods to equitably distribute benefits.

If Ecology later determines there is a need to address equitable distribution of environmental benefits stemming from the cap-and-invest program, Ecology can propose to the legislature additional statutory changes to the program or pursue rulemaking within the authorities established by the Climate Commitment Act.

3. If the agency determines it does not have the ability or authority to eliminate, reduce, or mitigate environmental harms caused by the action, or address the equitable distribution of environmental benefits, explain why that determination was made.

Ecology did not make such a determination. See response to questions 2 above.

Section 10: Executive Summary

The Department of Ecology (Ecology) is proposing legislation that would modify Washington State’s cap-and-invest program to allow linking Washington’s carbon market with the joint California-Québec market, and to improve the functioning of Washington’s market. The proposed legislation includes changes to allowance purchase and holding limits, offset credits, electricity reporting and imports, and other provisions. This Environmental Justice Assessment was initiated on October 19, 2023 and was open for public comment through December 31, 2023.

Ecology modified the proposed legislation during the comment period, based on feedback from stakeholders, discussions with legislations, and continued analysis and information gathering.

We expect the proposal will continue to change as it moves through the legislative process. This Environmental Justice Assessment covers proposals considered by Ecology for the first and second draft of the bill request.³⁸

Cap-and-invest is a statewide program and as a result, the agency request legislation may have impacts across the state. Ecology has reviewed the possible impacts of the proposals, and has not identified significant impacts to overburdened communities and vulnerable populations from the request legislation.

Ecology identified all federally recognized Tribes with lands and territories in Washington or Tribes with usual and accustomed land in Washington as potentially affected by the proposal and contacted their chairpersons and natural resources directors to offer consultation and invite them to participate in Tribal forums.

We contacted over 30 environmental justice and community-based organizations around the state serving these communities and populations through our email lists, through direct email and phone outreach, and virtual meetings. We provided the option to provide verbal or written comments.

We received feedback from several Tribes, eight organizations, and three individuals to inform this Environmental Justice Assessment. Several commented that meaningful engagement with overburdened communities and vulnerable populations is critical, and that the duration of the initial comment period was too short and limited information was available for stakeholders. To address those concerns, Ecology extended the comment deadline and held additional question and answer sessions. Ecology heard the importance of including policies to actively improve air quality in communities with high cumulative air pollution, such as placing pollution limits on certain high-polluting facilities in overburdened communities.

In addition to these comments, we have heard concerns about potential harms related to four provisions of the legislative proposal:

- Offsets credits that can come from linked jurisdictions.
- Allowance purchase limits for covered entities.
- Allowance holding limits for general market participants.
- Authority to modify certain provisions in rule.

Based on feedback received during the engagement period, Ecology removed the proposal expanding Ecology's authority to accept offset credits that are not located in a linked jurisdiction and modified the proposal related to holding limits.

We heard comments specific to linking carbon markets. Ecology is aware that the potential impacts of linking carbon markets with California and Québec are a concern for many organizations and communities. Since the proposed changes in the agency request legislation do not in themselves constitute linkage, or make linkage inevitable, we focused this assessment on the impacts of the proposals included in the legislation. There will be specific outreach

³⁸ Bill request numbers Z-0485.1/24 and Z-0485.2/24

related to linkage itself in 2024 and beyond, and we will complete a linkage-specific Environmental Justice Assessment.

We expect that the proposed legislation will result in net benefits to overburdened communities and vulnerable populations. We expect the agency request legislation to result in a more efficient and robust cap-and-invest market. Such market will continue to provide benefits to overburdened communities from reducing greenhouse gas and associated emissions and providing stable funding for projects funded with auction revenue.

Section 11: Notification of Completed Assessment

This section summarizes processes for staff to take once they have completed their assessment, including steps for sharing the final product. Learn more about all ongoing and completed Environmental Justice Assessments on our [agency webpage](#).³⁹

³⁹ <https://ecology.wa.gov/About-us/Who-we-are/Environmental-Justice/HEAL/EJ-Assessments>

Appendix A: Analysis of Impacts from Proposal in the Agency Request Legislation

This appendix includes additional explanations of each proposed policy, and information on the assumptions and background information used in Ecology’s analysis of the impacts of each policy. Based on feedback we received from the Environmental Justice Council, we have added this Appendix A as part of our effort to be explicit and transparent about our assumptions.

Proposal 1: Offsets credits – authorize Ecology to accept offset credits from linked jurisdictions that provide direct environmental benefits to those jurisdictions (RCW 70A.65.170(2))

[After receiving feedback, Ecology decided to remove this proposal in the request legislation that we submitted to the Governor’s office.]

Proposed statutory change: Ecology initially proposed to add the authority to accept offset credits⁴⁰ from linked jurisdictions to include offset credits from projects that provide direct environmental benefits (DEBs)⁴¹ to those jurisdictions. Ecology did not propose changes to the existing statutory requirements concerning the proportion of offset credits that must provide DEBs to Washington (at least 50% in the 1st compliance period, and at least 75% in later compliance periods).

Potential impacts: Ecology initially included this proposal due to the anticipated benefits of increasing the fungibility of offset credits between linked jurisdictions, which would reduce a barrier to linkage. This policy is expected to increase the availability and reduce the cost of offset credits that could be used for compliance in Washington.

Some Tribes expressed concerns that allowing offset credits from other jurisdictions could reduce benefits to Washington from offset projects, and that a reduction in the value of offsets may impact their ability to participate in the offset market and earn additional revenue.

Explanation of assessment of potential impacts: The current statute allows Ecology to accept offset credits from linked jurisdictions, but only if the projects are located in those jurisdictions or provide direct environmental benefits to Washington State. This proposal would have increased Ecology’s ability to accept offset credits from linked jurisdictions to include those from projects that provide DEBs to those jurisdictions, regardless of where the projects are located.

Washington does not yet have reliable data on the cost of offset credits in Washington, because the Washington offset program recently started. However, based on data from the California

⁴⁰ Offset credit: A tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent ([RCW 70A.65.010 \(51\)](#)).

⁴¹ Direct environmental benefits (DEBs) means environmental benefits accomplished through the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of the release of any pollutant that could have an adverse impact on land or waters of the state ([WAC 173-446-595](#)).

and Québec cap-and-trade programs, offset credits have been shown to be a lower-cost compliance option than allowances.

We expect that this proposal could increase the number of offset credits from linked jurisdictions that could be used for compliance in Washington. This may slightly reduce the cost of offset credits that could be used for compliance in Washington. However, we expect that even without this proposal, offset credits would be a lower-cost compliance option than allowances. Therefore, we do not expect this proposal to significantly influence the compliance strategies of covered entities in Washington – whether through reducing emissions, acquiring allowances, or acquiring offset credits.

California requires the operators of out-of-state offset projects to submit an application to the California Air Resources Board (CARB) to demonstrate that the project provides direct environmental benefits to California. These applications must include project-specific data, including peer-reviewed scientific research or governmental reports to support their claims. California then reviews and makes a determination for each project on an individual basis. To date, California has identified DEBs from projects based in Arizona, Oregon, and Washington, as well as projects that involve the destruction of ozone-depleting substances sourced from California. For example, the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation both have offset projects registered under the California offset system. The California Air Resources Board has determined these projects provide DEBs to California. Because they are located in Washington, they could also provide DEBs to Washington.

The requirement under current law for a certain percentage of offset credits to provide DEBs to Washington would remain in place if the proposed changes are enacted (if not linked, 100% of credits must provide DEBs to Washington; if linked, at least 50% of credits must provide DEBs to Washington in the first compliance period, and at least 75% in later compliance periods).

The location of future projects that are determined to provide DEBs to California is uncertain, with no requirement to locate those projects in overburdened communities or on Tribal lands. Therefore, the direct impact to overburdened communities in Washington is unknown at this time, but could be harmful if it results in fewer offset projects in Washington or less revenue from offset projects for Tribal governments.

Our assessment assumes that offset projects may be located on Tribal land, and that such offset projects would provide environmental and/or economic benefits to the Tribes and the surrounding communities. This assumption is based on a history of Tribes choosing to participate in the California carbon offset market and the interest expressed by Tribes to participate in the Washington carbon offset market in the future.

Proposal 2: Offsets credits – add the ability for Ecology to accept more offset credits from offset projects on Tribal lands (RCW 70A.65.170(3))

Proposed statutory change: The cap-and-invest program allows covered entities to use offset credits for up to 8% of their compliance obligation in the first compliance period. Currently, only 3% of a covered or opt-in entity’s compliance obligation may be met with offset credits from projects on Tribal lands. Ecology is proposing to add flexibility to allow the entire 8% of offset credits used for compliance to come from projects on Tribal lands. The proposal would

allow a covered entity to fulfill up to 5% of its compliance obligation using offset credits from any eligible offset project, whether on Tribal lands or not, with an additional 3% allowed solely from projects on Tribal lands.

Ecology is also proposing to make similar changes to the limits on the use of offset credits for the second compliance period. During the second compliance period, a total of 6% of a covered or opt-in entity's compliance obligation may come from offset credits. Only 2% of a covered or opt-in entity's compliance obligation for the second compliance period may be met with offset credits from projects on Tribal lands. The proposal would allow a covered entity to fulfill up to 4% of its compliance obligation using offset credits from any eligible offset project, whether on Tribal lands or not, with an additional 2% allowed solely from projects on Tribal lands.

Ecology is not proposing changes to the existing statutory requirement that restricts the total percentage of a covered entity's compliance obligation that can be satisfied with offset credits.

Potential impacts: Ecology anticipates that this proposal could provide economic and environmental benefits to federally recognized Tribes and communities residing on or near Tribal lands as a result of increased demand for Tribal carbon offset projects.

Explanation of assessment of potential impacts: The proposed change to Tribal offset usage limits would expand the ability for covered entities to use offset credits from projects on Tribal lands to satisfy a portion of their compliance obligation. By allowing entities to fulfill the entirety of their offset limit with offsets sourced from projects on Tribal lands in the first and second 4-year compliance periods (2023-2026 and 2027-2030, respectively), the proposed changes are likely to support the development of more Tribal carbon offsets projects in the program.

Our assessment assumes that an offset project would provide environmental and/or economic benefits to surrounding communities. This assumption is based on a history of Tribes choosing to participate in the California carbon offset market and the interest expressed by Tribes to participate in the Washington carbon offset market in the future.

Our assessment also assumes that Tribes would still retain existing authority to determine whether to site offset projects on Tribal lands. The Climate Commitment Act Implementation rule ([WAC 173-446-520\(3\)\(e\)](https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-520))⁴² requires prospective operators of offset projects on Tribal land to demonstrate that the Tribe on whose land the project is located has entered into an agreement with Ecology ensuring the enforceability of projects on the Tribe's land. In the absence of such an agreement, Ecology cannot approve the offset project listing. This provision expressly applies regardless of whether the proposed offset project is located on "tribal land" as defined in the CCA or "land that is owned by a tribe, or land that is subject to an ownership or possessory interest of a tribe." The required agreement must be in writing between Ecology and the tribal government and must specifically address all program requirements that are "applicable to the tribe in its role as the owner of land on which an offset project is located."

⁴² <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-520>

Accordingly, the agreement must include specific terms regarding the particular offset project and the Tribal land(s) on which the project is located.

Because the existing rule prohibits the listing of an offset project on Tribal lands without the Tribe's agreement, Ecology is not currently proposing changes to the statute to further address this particular concern. However, Ecology is currently engaged in rulemaking on the portions of the CCA rule relating to offset projects, and will continue to seek input on any outstanding concerns related to this issue, including through the Environmental Justice Assessment that will be completed for that rulemaking.

Proposal 3: Offset credits – remove the date restrictions on offset credits from offset projects provided by a linked jurisdiction (RCW 70A.65.170(5)(b))

[This proposal was added to the request legislation in early December based on additional information gathered indicating the existing statutory language could create a barrier for linkage.]

Proposed statutory change: The CCA currently requires offset credits to have been issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021. Ecology is proposing to remove the date restrictions for offset credits provided by a linked jurisdiction.

Potential impact: This change is being proposed to address a barrier to linkage. This policy change could marginally increase the availability and reduce the cost of offset credits that could be used for compliance in Washington.

Some Tribes expressed general concerns that a reduction in the value of offsets may impact their ability to participate in the offset market and earn additional revenue.

Explanation of assessment of potential impacts: Current statute allows a portion of offset credits to come from offset projects located in that jurisdiction. Offset credits can also be used in Washington if they provide direct environmental benefits to Washington. Because California and Québec have operated their cap-and-trade programs for over 10 years, both jurisdictions may have issued offset credits from reporting periods before 2019. Many of those older offset credits have already been used for compliance, but some are still available. If those older offset credits remain unused until, they would be available for sale in the linked market but couldn't be used for compliance in Washington under the current statutory language. This would be a barrier to linkage because it impacts the fungibility of compliance instruments in the linked market.

This proposed change enables Ecology to accept more offset credits from linked jurisdictions by removing the date restrictions that currently apply to all offset credits used in Washington.

Ecology does not yet have reliable data on the cost of offset credits in Washington, because the Washington offset program only recently started. Based on data from the California and Québec cap-and-trade programs, offset credits have been shown to be a lower-cost compliance option than allowances.

We expect that this proposal would result in a small increase to the number of offset credits from linked jurisdictions that could be used for compliance in Washington. This may marginally reduce the cost of offset credits that could be used for compliance in Washington. However, we

expect that even without this proposal, offset credits would be a lower cost compliance option. Therefore, we expect this proposal to have little or no impact on covered entities' compliance strategies – whether through reducing emissions, acquiring allowances, or acquiring offset credits.

The requirement under current law for a certain percentage of offset credits to provide direct environmental benefits to Washington would remain in place if the proposed changes are enacted (if not linked, 100% of credits must provide DEBs to Washington; if linked, at least 50% of credits must provide DEBs to Washington in the first compliance period, and at least 75% in later compliance periods).

The location of future projects in Washington is uncertain. Therefore, the direct impact to members of overburdened communities is currently unknown.

Proposal 4: Allow Ecology to change the length of compliance periods, if needed to synchronize with linked jurisdictions (RCW 70A.65.010(20))

[This proposal was added to the request legislation in early December based on additional information gathered indicating the existing statutory language could create a barrier for linkage.]

Proposed statutory change: Washington has four-year compliance periods, while California and Québec have three-year compliance periods. We have determined that compliance periods across linked jurisdictions may need to be synchronized. However, the compliance periods in the California-Québec market could change in future, as the agencies that implement the cap-and-trade programs in these jurisdictions have the authority to revise their compliance periods.

We are proposing that Ecology be authorized to revise Washington's compliance periods as needed to ensure they are synchronized with those of other linked jurisdictions. If needed, Ecology would modify compliance periods through rulemaking, which includes public comment and another Environmental Justice Assessment. This would only apply to future compliance periods. Ecology would not alter the first compliance period, which is 2023-2026.

Potential impacts: This change is being proposed to address a barrier to linkage. This statutory change would not directly or immediately result in any impacts. If Washington, California, and Québec move forward with linkage, potential impacts of modified compliance periods would be evaluated through another Environmental Justice Assessment completed as part of the rulemaking process.

Explanation of assessment of potential impacts: This provision would allow Ecology to make changes to the length of compliance periods as necessary for linkage. The statutory change would not directly or immediately result in any impacts.

Any changes to the compliance periods would need to be made through rulemaking. Such a rulemaking would qualify as a "significant agency action" and require an Environmental Justice Assessment, which entails an evaluation of potential impacts through focused engagement with Tribes and overburdened communities.

Proposal 5: Increase allowance purchase limit for covered entities to 25% (RCW 70A.65.100(6)(a))

Proposed statutory change: Ecology is proposing to increase the allowance purchase limit for covered entities from 10% to 25% per auction.

Potential impact: This change is being proposed to address a barrier to linkage. Ecology anticipates that this proposal would have a positive impact on the functioning of the cap-and-invest allowance market. We anticipate it would have the most benefit for covered entities that have relatively large compliance obligations because it would enable them to purchase additional allowances at auctions, instead of making those purchases on the secondary market, which often has a price premium. Covered entities' compliance obligations would stay the same. The purchase limit (number of allowances that one can purchase at any given auction) is tied to the number of allowances available at a given auction, which is relatively small.⁴³ This means the purchase limits have a much smaller impact on an entity's market influence than the holding limits, which are based on annual allowance budgets.⁴⁴ Therefore, the increase from 10% purchase limit to a 25% purchase limit will have a small impact on an entity's ability to exert improper influence over the market in the near term. (An illustration of this can be found in the explanation below.)

We do not anticipate this proposal would have an impact on overburdened communities.

Explanation of assessment of potential impacts: The annual allowance budget for 2023 is about 63 million and has generated over \$1 billion in revenue. Knowing that the amount of money in the market would be large, the Legislature included measures in the CCA to minimize the ability of market participants to manipulate the market. One of those measures in the CCA is a limit on the number of allowances that any one purchaser can buy at any given auction. For covered or opt-in entities, this purchase limit is set at 10% of the allowances offered at a given auction ([RCW 70A.65.100\(6\)\(a\)](#)).⁴⁵ For general market participants, the purchase limit is 4% of the allowances offered at a given auction ([RCW 70A.65.100\(6\)\(b\)](#)).⁴⁶ These limits minimize the ability for any one market participant to buy and accumulate enough allowances to have an undue influence on the market.

Ecology is proposing to increase the 10% purchase limit to 25% for entities with a compliance obligation. Ecology is making this proposal for two reasons. First, the 10% purchase limit makes it very difficult for some large greenhouse gas emitters in Washington to purchase sufficient auctioned allowances to cover their large greenhouse gas emissions. Second, per current statute, Ecology is pursuing linking with the California-Québec greenhouse gas market. If linked, the purchase limits across jurisdictions would need to match.

⁴³ The number of allowances available at any given auction is the annual allowance budget minus all no-cost allowance allocations minus all reserve account allocations and spread over four quarterly auctions.

⁴⁴ Although Ecology is proposing to amend the statutory holding limit that applies to general market participants, the agency request legislation does not propose changing the holding limits for entities with a compliance obligation.

⁴⁵ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100>

⁴⁶ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100>

California and Québec’s purchase limit is 25% of the total number of allowances offered for sale at an auction. In order to link with the California-Québec market, the purchase limits in all three jurisdictions must be aligned. Because increasing our purchase limit is necessary to enable covered entities in Washington to purchase sufficient allowances to cover their emissions, we are proposing to increase our purchase limit to match their 25% limit rather than discussing with California and Québec to decrease the 25% limit to match Washington’s 10% limit.

While an increase in the purchase limit from 10% to 25% appears to be a large increase, it is not a large increase in terms of the number of allowances affected. The purchase limit is based on the number of allowances offered in a particular auction. At each regular quarterly auction, Ecology offers 25% of the allowances available for auction for that year. The number of allowances available for auction in a given year is determined by removing all the no cost allowances provided to covered entities and utilities, and all the allowances placed into the reserve accounts from the annual allowance budget. After all these adjustments, the number of allowances available at a given auction is a fraction of the annual allowance budget.

For example, for the first auction in 2023, Ecology offered 6,195,222 allowances for sale, while the annual allowance budget was approximately 63 million allowances. Ten percent of the allowances offered for sale at that auction is 619,522 allowances. Twenty-five percent of the allowances offered for sale is 1,546,305.

Based on our analysis and monitoring of the market to date, this increase to the purchase limit will not enable market participants to manipulate the market. While the purchase limit is an important feature of the program, the holding limits – which are based on the total annual allowance budget – actually play a larger role in limiting the total acquisition of allowances by large entities, preventing market manipulation. An internal market monitoring team, supported by the services of an independent market monitor, assure that ongoing market activities are monitored and that potential risks are mitigated.

Increasing the purchase limit will improve the ability of the market to function effectively by making it easier for covered entities to purchase sufficient allowances to cover their large greenhouse gas emissions. Increasing the purchase limit will not significantly reduce the incentive to decarbonize because the cap on greenhouse gas emission will decline and the cost to pollute will still increase overtime. We believe this change will impact only market participants, and Ecology's initial assessment does not indicate negative impacts to overburdened communities.

Proposal 6: Remove vintage year allowance holding limit for general market participants (RCW 70A.65.100(6)(b))

Proposed statutory change: Ecology is proposing to remove the statutory provision that prohibits a general market participant from owning more than 10% of the total allowances issued in any calendar year (called a “vintage year”⁴⁷), if Washington links with a jurisdiction

⁴⁷ "Vintage year" means the annual allowance allocation budget year to which an individual Washington greenhouse gas allowance is assigned.

that does not have this requirement. The overall holding limit for general market participants in [WAC 173-446-150](#)⁴⁸ would remain in effect.

Potential impacts: This change is being proposed to address a barrier to linkage. We do not anticipate impacts from this proposal. The vintage year holding limit is not expected to have an effect in a linked market.

Explanation of assessment of potential impacts: The CCA includes a limit on the number of allowances any given market participant can hold at any one time in its CCA accounts ([RCW 70A.65.090\(7\)](#)).⁴⁹ This limit is another measure to minimize the potential for market manipulation. In this case, the CCA requires Ecology to set these limits, called holding limits, by rule. Holding limits ensure that no market participant can accumulate an excessive number of allowances in its CCA accounts, which would give it disproportionate power in the market. The holding limits Ecology adopted are determined using a formula recommended by the Western Climate Initiative in 2010 and detailed in the rule ([WAC 173-446-150](#)).⁵⁰ California and Québec also use the same formula.

In addition to this directive for Ecology to establish the overall holding limit by rule, the CCA limits the number of allowances issued in a given year (called a “vintage year”⁵¹) that a general market participant may hold to up to 10% of the annual allowance budget for that year ([RCW 70A.65.100\(6\)\(b\)](#)).⁵²

Concerns have been raised that without this vintage year holding limit, general market participants who participate in the market but are not covered entities could artificially inflate allowance prices by adding to the demand and competition for allowances. To address these concerns Ecology modified this proposal so it would only go into effect if we linked.

In 2023, the annual allowance budget was approximately 63,000,000. That means that for 2023, the 10% vintage year holding limit is 6,300,000 allowances. This number is much greater than the overall holding limit for 2023 which is approximately 3,450,000 allowances as calculated using Ecology’s holding limits rule. Therefore, compliance with Ecology’s stricter holding limits set forth in rule ensures that general market participants are also complying with the statute’s less strict 10% vintage year holding limit.

While both California and Québec use the formula adopted in Ecology’s rule to determine holding limits, neither California nor Québec have the 10% vintage year holding limit on general market participants. To link with California and Québec, Washington’s holding limits needs to be aligned with the other jurisdictions.

If Ecology kept the vintage year holding limit in place and linked with California and Québec, general market participants could choose to register in the California or Québec programs

⁴⁸ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-150>

⁴⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.090>

⁵⁰ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-446-150>

⁵¹ "Vintage year" means the annual allowance allocation budget year to which an individual Washington greenhouse gas allowance is assigned.

⁵² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100>

instead of registering in Washington and could still participate in the same joint auctions and still trade across jurisdictions. Therefore, if we linked markets and kept the vintage year holding limit, it would not have an effect on the market.

The proposed change to the vintage year holding limit would only go into effect if Washington links with jurisdictions that do not have a vintage year holding limit for general market participants. If Washington remains a standalone market, the vintage year holding limit would remain in place. In a standalone Washington market, we expect the vintage year holding limit may start to influence the market around 2040 as annual allowance budgets are reduced to under 25 million allowances (starting around 2040) and the vintage year holding limit becomes more stringent than the overall holding limit.

Proposal 7: Remove Ecology’s discretion to reduce penalties (RCW 70A.65.200(7))

[This proposal was added to the request legislation in early December based on additional information gathered indicating the existing statutory language could create a barrier for linkage.]

Proposed statutory change: If a covered entity or opt-in entity does not submit the required number of compliance instruments (allowances or offset credits) to meet a compliance obligation, that entity must submit four allowances for every missing compliance instrument within six months. If an entity fails to submit these “penalty allowances”, Ecology must issue a monetary penalty of up to \$10,000 per day per violation, and/or an order with a plan and schedule for coming into compliance. During the first compliance period, Ecology “may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances” ([RCW 70A.65.200\(7\)](#))⁵³. This discretion to reduce the penalty may be a barrier to linkage because, by authorizing Ecology to reduce the number of penalty allowances required, it gives Ecology greater discretion to reduce the stringency of Washington’s program than would exist without subsection (7).

Ecology proposes that this subsection (7) be removed from the statute.

Potential impacts: This change is being proposed to address a barrier to linkage. Removing subsection (7) will remove Ecology’s ability to reduce the number of penalty allowances required when a covered entity fails to submit the required number of compliance instruments during the first compliance period. This strengthens the program by providing greater incentive for compliance.

Proposal 8: Add authority for Ecology to modify certain provisions in rule, if necessary to link

Proposed statutory change: Ecology is proposing to add a provision to give Ecology authority to resolve certain issues and/or modify certain provisions of the cap-and-invest program via rule, as necessary, to implement linkage.

This authority is proposed for the following sections of the Climate Commitment Act:

⁵³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.200>

- RCW 70A.65.100 Auctions of allowances
- RCW 70A.65.140 Emissions containment reserve withholding
- RCW 70A.65.150 Allowance price containment
- RCW 70A.65.160 Price ceiling
- RCW 70A.65.170 Offsets

Potential impacts: The statutory change would not directly or immediately result in any impacts. If Ecology pursues rulemaking under these provisions, more specific impacts would be evaluated through an Environmental Justice Assessment completed as part of the rulemaking process.

Explanation of assessment of potential impacts: These provisions would authorize Ecology to make changes through rulemaking. The statutory change would not directly or immediately result in any impacts, as any changes would need to be made through rulemaking.

Such rulemaking would qualify as a “significant agency action” and require an environmental justice assessment, which entails an evaluation of potential impacts through focused engagement with Tribes and overburdened communities.

Proposal 9: Modify requirements related to electricity reporting and imports (RCW 70A.15.2200(5)(a), RCW 70A.65.010(27) and (42), RCW 70A.65.080(1)(c))

Proposed statutory change:

1. Reporting of electricity ([RCW 70A.15.2200\(5\)\(a\)](#)):⁵⁴ Ecology proposes to remove the 10,000 metric tons of carbon dioxide-equivalent (MT CO₂e) per year threshold for reporting GHG emissions for electricity in Washington. This would require a change to the state Clean Air Act, RCW 70A.15.2200(5)(a) (not the CCA). This would require electric power entities with emissions below the existing reporting threshold to begin reporting their emissions.
2. Electricity imports ([RCW 70A.65.080\(1\)\(c\)](#)):⁵⁵ Ecology proposes to amend the CCA to require all importers of unspecified electricity to be covered entities, regardless of the amount of unspecified electricity they import. This would impose a compliance obligation for emissions that are currently exempt from the program.
3. Electricity imports ([RCW 70A.65.010\(27\)](#)):⁵⁶ Ecology proposes to expand the definition of “electricity importer” to include several scenarios previously overlooked, as well as a catch-all provision allowing Ecology to define by rule electricity importers not defined in the current statute.
4. Removing requirement that “netting” be reported ([RCW 70A.65.010\(42\)](#)):⁵⁷ Ecology proposes to remove the “netting” provision in the statute to facilitate linkage.

⁵⁴ <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.15.2200>

⁵⁵ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.080>

⁵⁶ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.010>

⁵⁷ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.010>

Potential impacts: The proposals may result in a small increase in the scope of greenhouse gas emissions to be reported under the state Clean Air Act and covered by the cap-and-invest program as a result of tightening the requirements on electricity reporting and coverage. Amending the definition of electricity importer may provide greater clarity and certainty to electric power entities, which could improve the accuracy of reported emissions.

These proposals would address barriers to linkage.

Explanation of assessment of potential impacts: Taken together, the electricity reporting and imports provisions will likely result in a small incremental increase in the scope of greenhouse gas emissions from electricity imports captured by the cap-and-invest program. These provisions will also serve as a deterrent to any attempt by parties to take advantage of existing gaps in the program by breaking up imports of electricity into small transactions that would individually fall under the reporting or coverage threshold. By reducing gaps in program coverage and increasing the scope of emissions reporting slightly, the provisions may marginally increase the ability of the cap-and-invest program to reduce emissions from the electricity importing sector.

The proposals also reduce barriers to linkage, by ensuring the scope of electricity reporting and program coverage in Washington is closer to what exists in California.

Proposal 10: Modify reserve auction application timelines (RCW 70A.65.150(5))

Proposed statutory change: Ecology proposes to allow 30-day advance notification for Allowance Price Containment Reserve (APCR) or Emissions Containment Reserve (ECR) auctions (instead of 60 days, as is currently required), and to authorize Ecology to determine the registration deadline for reserve auctions by rule.

Potential impacts: No impacts identified at this time.

Explanation of assessment of potential impacts: The CCA requires Ecology to maintain an APCR and an ECR. Ecology is authorized to hold auctions of allowances from those reserves under specific circumstances. Under current statute, APCR and ECR auctions must follow the same procedures as quarterly auctions ([RCW 70A.65.150\(5\)](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.150)).⁵⁸ For quarterly auctions, the law requires Ecology to provide notice 60 days in advance of each quarterly auction ([RCW 70A.65.100\(2\)\(a\)](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100)),⁵⁹ and to provide an application window of at least 30 days for entities to register to participate ([RCW 70A.65.100\(4\)\(a\)](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100)).⁶⁰ The 60-day notice requirement and the 30-day registration requirement create scheduling difficulties when APCR auctions are triggered. As a result, Ecology proposes amending RCW 70A.65.150 to allow for a 30-day advance notification for APCR or ECR auctions, and to authorize Ecology to determine the registration deadline for reserve auctions by rule.

The provision related to the APCR and ECR auction registration deadlines would authorize Ecology to make changes through rulemaking. This statutory change would not directly or

⁵⁸ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.150>

⁵⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100>

⁶⁰ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.100>

immediately result in any impacts. If Ecology does pursue rulemaking to address the registration deadlines, we would evaluate the potential impacts to overburdened communities through another Environmental Justice Assessment required as part of the rulemaking process.

With a shorter notification period for APCR auctions and ECR auctions, communities would have less time between notification of an auction and the auction occurring. However, because the notification does not provide any opportunity for engagement, response, or ability to impact the auction, shortening the notification to 30 days would not result in any tangible impact on communities.

Proposal 11: Authorize Ecology to deviate from the EPA greenhouse gas reporting platform (RCW 70A.15.2200)

Proposed statutory change: Ecology proposes to add a provision to authorize Ecology to deviate from U.S. Environmental Protection Agency (EPA) greenhouse gas (GHG) reporting requirements.

Potential impacts: This statutory change would not directly or immediately result in any impacts. If Ecology chooses to use this authority to deviate from EPA’s reporting requirements, those changes will need to be made through rulemaking.

The proposal could result in more consistent greenhouse gas emissions data over time. This would make it easier to measure changes in greenhouse gas emissions, providing communities the ability to compare with previous data more accurately. The potential impacts of such changes will be further evaluated through another Environmental Justice Assessment completed as part of the rulemaking process.

Explanation of assessment of potential impacts: Washington’s GHG emissions reporting system is currently required to mirror the U.S. Environmental Protection Agency (EPA) GHG emissions reporting requirements and to use the EPA reporting platform, called e-GGRT ([RCW 70A.15.2200\(5\)\(c\)](#)).⁶¹ The cap-and-invest program requires that carbon intensity baselines for emissions-intensive, trade-exposed industries (EITEs) be determined using emissions reports, including emission factors and global warming potentials, as reported to Ecology and the EPA between 2015 and 2019.

The EPA is currently updating its GHG reporting requirements, revising reporting protocols and changing emission factors and global warming potentials – a process it undergoes periodically. The updated EPA rule would go into effect in 2025 to cover 2025 emissions reported in March 2026. With these changes, the EPA reporting requirements will diverge from the reporting parameters used for the CCA program’s 2015-2019 baseline. The expected result is that comparing future emissions reports under the new EPA requirements to the 2015-2019 baseline data (as mandated by the CCA EITE requirements) will become less useful, as the two data sets will reflect increasingly different information.

To resolve this problem, California developed its own reporting platform called ‘California e-GGRT’. Ecology is considering following California’s lead and developing our own GHG reporting

⁶¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.15.2200>

platform. To do this, the GHG reporting statute ([RCW 70A.15.2200](#))⁶² needs to be amended, authorizing Ecology to deviate from EPA reporting requirements.

This proposal could result in more consistent greenhouse gas emissions data over time in Washington. This proposal may provide potential improvements to the overall function of the program by improving the ability for Ecology to interpret GHG emissions trends and adjust allowance budgets to ensure GHG reduction requirements are met. This would also make it easier for communities to measure actual changes in greenhouse gas emissions from entities in Washington.

We anticipate this change will have no impact or a slight beneficial impact to overburdened communities because it means Ecology will have more consistent data reported to us and can better compare emissions over time.

Proposal 12: Modify due date of the CCA Spending Report (RCW 70A.65.300)

Proposed statutory change: Ecology proposes to change the annual due date for the spending report from September 30 to November 30.

Potential impacts: Shifting the due date of the report will enable the most up-to-date information to be included in the report, by allowing agencies to close out all expenditures from the fiscal year and report to Ecology. This will result in legislators and the Governor’s office having better data to base decisions on and the public having better data to track CCA expenditures.

Explanation of assessment of potential impacts: Under current law, Ecology is required to submit a report to the Legislature outlining “all distributions of money” from CCA funds by September 30 of each year. The report provides data to the Office of Financial Management and the Legislature not just about how funds are spent, but the effectiveness of those expenditures, including the resulting GHG reductions, investments in overburdened communities, and investments in projects supported by Tribal resolution. Ecology is requesting that the report deadline be shifted to November 30, so that agencies have more time to close out all expenditures from the fiscal year and report the most up-to-date information to Ecology.

This change will also allow organizations and interested parties representing overburdened communities, including the Environmental Justice Council, to have more comprehensive information on how program funds are spent. This could lead to improvements in the program spending, by providing better data for oversight.

⁶² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.15.2200>